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IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

2011 JAN -7 A 10:36

STATE OF OHIO, ex rel.
RICHARD CORDRAY
OHIO ATTORNEY GENERAL
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

CAROL A. MEAD
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO, OH

Plaintiff,

v.

Case No.

2011 CV 0025

Judge

Judge Gary L. Yost

James W. Comp
3015 Allen-Comp Road
Dorset, OH 44032

and

Comp Dairy Farm, Ltd.
3015 Allen-Comp Road
Dorset, OH 44032

and

Comp Properties, Ltd.
3015 Allen-Comp Road
Dorset, OH 44032

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

Defendants' installation and operation of a concentrated animal feeding facility with seven hundred (700) or more dairy cows ("Comp Facility") requires strict environmental and operational controls. Defendants failed to obtain the required permit to install and permit to

operate for their concentrated animal feeding facility prior to the construction and operation of the facility.

Plaintiff, the State of Ohio ("Plaintiff" or "State of Ohio"), by and through its counsel, Attorney General Richard Cordray, and at the request of the Governor of the State of Ohio, ("Governor"), hereby institutes this action against Defendants, James W. Comp, Comp Dairy Farm, Ltd., and Comp Properties, Ltd., (hereinafter collectively referred to as "Defendants") to enforce Ohio's concentrated animal feeding facility laws, Ohio Revised Code ("R.C.") Chapter 903, and the rules adopted thereunder.

Pursuant to Rule 8(A) of the Ohio Rules of Civil Procedure, the Plaintiff states that this Complaint seeks civil penalties in excess of twenty-five thousand dollars (\$25,000.00).

GENERAL ALLEGATIONS

1. Defendant James W. Comp, Defendant Comp Dairy Farm, Ltd., and Defendant Comp Properties, Ltd. are proper parties to this Complaint and, at all times relevant to this Complaint, have been "persons" as that term is defined in R.C. 1.59 and R.C. 903.01.

2. Defendant Comp Dairy Farm, Ltd. is a for-profit Limited Liability Company organized under the laws of the State of Ohio on or about January 6, 1998. Based on information and belief, Defendant Comp Dairy Farm, Ltd. along with Defendant James W. Comp operate the Comp Facility, located at 3015 Allen Comp Road, Dorset, Ashtabula County, Ohio 44032.

3. Defendant Comp Properties, Ltd. is a for-profit Limited Liability Company organized under the laws of the State of Ohio on or about December 3, 1997. Based on information and belief, Defendant Comp Properties, Ltd. along with Defendant James W. Comp have owned the land where the Comp Facility is located and operated from on or about December 10, 1997 to the present.

4. Based upon information and belief, from January 6, 1998 to the present, Defendant Comp Dairy Farm, Ltd. was owned and/or controlled in whole or in part by Defendant James W. Comp, who is a member and manager of the day-to-day operations of Comp Dairy Farm, Ltd., including its compliance with environmental laws and rules.

5. Based upon information and belief, from December 3, 1997 to the present, Defendant Comp Properties, Ltd. was owned and/or controlled in whole or in part by Defendant James W. Comp, who is a member and manager of the day-to-day operations of Comp Properties, Ltd., including its compliance with environmental laws and rules.

6. Based upon information and belief, James W. Comp by virtue of his position as a member and/or manager of Defendant Comp Dairy Farm, Ltd. and Defendant Comp Properties, Ltd., and as the "owner/operator" of the Comp Facility, alone or in conjunction with others caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition or in the alternative, Defendant James W. Comp knew about or should have known about these violations and by himself or in conjunction with others had the authority to prevent or stop these violations but failed to exercise his authority to do so. Defendant James W. Comp is personally liable for these violations.

7. The Ohio Department of Agriculture ("ODA") Livestock Environmental Permitting Program ("LEPP") administers the concentrated animal feeding facility ("CAFF") program established in R.C. Chapter 903 and the rules promulgated thereunder in Ohio Administrative Code ("O.A.C.") Chapter 901:10.

8. Ohio Revised Code 903.02 prohibits any person from installing a new CAFF without first obtaining a Permit To Install ("PTI") issued by the Director of the ODA ("Director"). For dairy farms, a CAFF includes an animal feeding facility with a total design

capacity equal to or more than 700 mature dairy cattle, whether milked or dry, as stated in R.C. 903.01(E) and R.C. 903.01(M)(1).

9. Ohio Revised Code 903.01(B) defines an "animal feeding facility" as a lot, building, or structure where both of the following conditions are met: (1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period; (2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure. An "animal feeding facility" also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied. Two or more animal feeding facilities under common ownership are considered to be a single animal feeding facility for the purposes of R.C. Chapter 903 if they adjoin each other or if they use a common area or system for the disposal of manure. Ohio Administrative Code Section 901:10-1-01(X) defines "design capacity" as the ability to house or maintain the total number of animals confined or to be confined in open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, medication pens, animal walkways, and stables.

10. Ohio Revised Code 903.03 prohibits any person from operating a CAFF without first obtaining a Permit To Operate ("PTO") issued by the Director.

11. Ohio Revised Code 903.16(C) grants the Director the authority to request the Ohio Attorney General, in writing, to bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate R.C. 903.02, R.C. 903.03, or R.C. 903.04; the terms and conditions of a PTI, PTO, or review compliance certificate, including

the requirements established under R.C. 903.06(C) or R.C. 903.07(A); rules adopted under R.C. 903.10(A); or an order issued under R.C. 903.16(B).

12. Ohio Revised Code 903.16(D)(1) grants the Director the authority to request the Ohio Attorney General, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a PTI, PTO, or review compliance certificate, including the requirements established under R.C. 903.06(C) or R.C. 903.07(A).

13. Ohio Revised Code 903.16(D)(2) grants the Director the authority to request the Ohio Attorney General, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating R.C. 903.02, R.C. 903.03, or R.C. 903.04, rules adopted under R.C. 903.10(A), or an order issued under R.C. 903.16(B).

14. Pursuant to R.C. 903.16(D)(3), a person who has committed a violation for which the Ohio Attorney General may bring an action for a civil penalty under R.C. 903.16(D)(1) or (2) shall pay a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

15. On or about March 23, 2003, Defendant James W. Comp and Defendant Comp Dairy Farm, Ltd. submitted to ODA LEPP a partial PTO application for a CAFF with a design capacity of 925 mature dairy cows.

16. On or about April 9, 2003, ODA LEPP personnel discovered that the Comp Facility possessed 800 mature dairy cows.

17. On or about June 4, 2003, ODA LEPP personnel sent a letter to Defendant James W. Comp and Defendant Comp Dairy Farm, Ltd. to advise that a complete PTO application was required by law.

18. On or about July 1, 2003, Defendant James W. Comp and Defendant Comp Dairy Farm, Ltd. submitted an application for a PTO to ODA LEPP.
19. On or about September 25, 2003, ODA LEPP personnel sent a letter with items from the July 1, 2003 PTO application that needed to be addressed and corrected.
20. On or about October 6, 2003, ODA LEPP personnel discovered that the Comp Facility possessed approximately 775 mature dairy cows.
21. On or about October 15, 2003, ODA LEPP personnel sent a letter with additional items that needed to be addressed and corrected in the July 1, 2003 PTO application after ODA LEPP personnel visited the Comp Facility on or about October 6, 2003.
22. On or about February 11, 2004, Defendant James W. Comp, on his own behalf and on behalf of Defendant Comp Dairy Farm, Ltd., submitted a letter to ODA LEPP requesting to withdraw the PTO application. Defendant James W. Comp explained that a PTO would no longer be required as the non-lactating cows would be removed from the production facility and moved to another non-contiguous farm, resulting in less than 700 dairy cows at the Comp Facility.
23. On or about April 27, 2007, Defendant James W. Comp contacted ODA LEPP personnel and requested ODA LEPP personnel to visit the Comp Facility as Defendant James W. Comp, on his own behalf and on behalf of Defendant Comp Dairy Farm, Ltd., was again considering obtaining permits from ODA.
24. On or about May 9, 2007, ODA LEPP personnel visited the Comp Facility where Defendant James W. Comp on his own behalf and on behalf of Comp Dairy Farm, Ltd., discussed the company's plan to expand the design capacity of the Comp Facility from less than 700 dairy cows to a range between 1,000 and 1,200 dairy cows.

25. On or about January 7, 2008, an ODA LEPP inspector traveled to the Comp Facility and discovered that the Comp Facility had the design capacity for and possessed more than 700 dairy cows. Defendant James W. Comp and Defendant Comp Dairy Farm, Ltd. had not applied for a PTI or a PTO, nor had ODA issued Defendant James W. Comp and Defendant Comp Dairy, Ltd. a PTI or a PTO.

26. Based on information and belief, on or about August 29, 2008, Defendant Comp Dairy Farm, Ltd.'s environmental consultant submitted a letter on behalf of Defendant Comp Dairy Farm, Ltd. to the Ashtabula County Commissioners stating that Defendant Comp Dairy Farm, Ltd. currently operates with approximately 1,000 dairy cows and plans to expand the Comp Facility to 1,200 dairy cows.

27. On or about October 22, 2008, Defendant James W. Comp and Defendant Comp Dairy Farm, Ltd. submitted a PTI and PTO application to ODA stating that the Comp Facility currently possesses 1,000 dairy cows and requests a design capacity of 1,200 dairy cows. ODA LEPP has not issued a PTI or PTO to Defendant James W. Comp and Defendant Comp Dairy Farm, Ltd.

28. On or about November 25, 2008, ODA LEPP personnel discovered that a free-stall building with a design capacity of 500 dairy cows had been constructed, a calf barn had been constructed, and a new manure storage pond had been constructed at the Comp Facility since on or about January 7, 2008. ODA LEPP personnel also discovered that the Comp Facility possessed approximately 900 dairy cows on or about November 25, 2008. Based on information and belief, the free-stall building had been stocked with dairy cows during October 2008.

29. To date, Defendants James W. Comp, Comp Properties, Ltd., and Comp Dairy Farm, Ltd. have not received a permit to install or permit to operate from the Director.

30. The general allegations set forth in paragraphs one (1) through twenty-nine (29) are hereby incorporated into each count as if restated therein.

COUNT ONE

Defendants Constructed A CAFF Without A Permit To Install

31. Ohio Revised Code 903.02 prohibits a person from installing a new CAFF without first obtaining a PTI issued by the Director.

32. Based on information and belief, from on or about January 7, 2008 to present, and on other dates unknown at this time, Defendant James W. Comp, Defendant Comp Properties, Ltd., and Defendant Comp Dairy Farm, Ltd. installed a new CAFF at the Comp Facility by constructing a free-stall building with a design capacity of 500 dairy cows, a calf barn, and a new manure storage pond, without first obtaining a PTI issued by the Director. These additional structures, combined with the structures already in existence at the Comp Facility, increased the design capacity of the Comp Facility to a level equal to or more than 700 dairy cows, whether milked or dry, thus making the Comp Facility a new CAFF under R.C. 903.01.

33. The Director has never issued Defendant James W. Comp, Defendant Comp Dairy Farm, Ltd., or Defendant Comp Properties, Ltd. a PTI for the installation of the Comp Facility.

34. The conduct alleged in this Count constitutes violations of R.C. 903.02 for which the Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each day of each violation, including every day of violation occurring after the filing of this Complaint, pursuant to R.C. 903.16.

COUNT TWO

Defendants Operated A CAFF Without A Permit To Operate

35. Ohio Revised Code Section 903.03 prohibits a person from operating a CAFF without first obtaining a PTO issued by the Director.

36. Based on information and belief, Defendant James W. Comp, Defendant Comp Properties, Ltd., and Defendant Comp Dairy Farm, Ltd. have operated a CAFF at the Comp Facility from on or about January 7, 2008 to present, and on other dates unknown at this time, without first obtaining a PTO issued by the Director.

37. The Director has never issued Defendant James W. Comp, Defendant Comp Dairy Farm, Ltd., or Defendant Comp Properties, Ltd. a PTO for the operation of the Comp Facility.

38. The conduct alleged in this Count constitutes violations of R.C. 903.03 for which the Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten thousand dollars (\$10,000.00) for each day of each violation, including every day of violation occurring after the filing of this Complaint, pursuant to R.C. 903.16.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

A. Order each Defendant to pay a civil penalty of ten thousand dollars (\$10,000) for each day of each violation alleged in this Complaint, including each day of each violation subsequent to the filing of this action, pursuant to R.C. Section 903.16;

B. Order Defendants to submit to the Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068 an approvable PTI application in accordance with R.C. 903.02(C), within 90 days;

C. Order Defendants to submit to the Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068 an approvable PTO application in accordance with R.C. 903.03(C), within 90 days;

D. Order Defendants to submit to the Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068 approvable plans for the installation of a new stormwater pond, within 90 days;

E. Order Defendants to install groundwater monitoring wells, monitor the groundwater for total coliform and nitrate levels at a minimum of once every six months, and submit the results of the groundwater monitoring to the Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068;

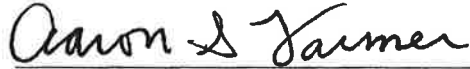
F. Order Defendants to pay costs, including reasonable attorney fees, of this action;

G. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and

H. Grant such relief as this Court may deem necessary and appropriate.

Respectfully submitted,

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



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Attorneys for the Plaintiff, State of Ohio

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**IN THE COURT OF COMMON PLEAS
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**STATE OF OHIO, ex rel.,
RICHARD CORDRAY
OHIO ATTORNEY GENERAL**

Plaintiff,

v.

James W. Comp, et. al.,

Defendants.

Case No.

2011 CV 0025

CAROL A. MEAD
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO, OH

Judge

Judge Gary L. Yost

CONSENT ORDER

The Complaint in the above-captioned matter having been filed, and Plaintiff, State of Ohio, by its Attorney General Richard Cordray ("Plaintiff") and Defendants, James W. Comp, Comp Dairy Farm, Ltd., and Comp Properties, Ltd. ("Defendants"), with advice of counsel, have consented to the entry of this Order.

NOW, THEREFORE, without trial of any issue of fact or law, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this case pursuant to Ohio Revised Code ("R.C.") Chapter 903. The Complaint states a claim upon which relief can be granted against the Defendants pursuant to R.C. Chapter 903. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, all subsequent owner(s) and/or operator(s), and all successors in interest to the Comp

Facility which is currently owned and operated by Defendants James W. Comp, Comp Properties, Ltd., and/or Comp Dairy Farm, Ltd., which is located at 3015 Allen Comp Road, Dorset, Ashtabula County, Ohio 44032 ("the Comp Facility"), and to their officers, agents, servants, employees, successors, and assigns, and those persons in concert or privity with them.

3. Defendants and successors in interest of the Comp Facility shall give at least thirty (30) days notice to the Ohio Department of Agriculture ("ODA") Livestock Environmental Permitting Program ("LEPP") before the sale or transfer of ownership of the facility.

4. Defendants shall provide a copy of this Consent Order to all successors in interest and/or any subsequent owner(s) and/or operator(s) of the Comp Facility.

5. No change in ownership or status of Defendants, including but not limited to any transfer of assets or personal property, shall in any way alter Defendants' rights or obligations under this Consent Order. Defendants shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of Defendants' ownership rights.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. Plaintiff alleges in its Complaint that Defendants Comp Properties, Ltd. and James W. Comp own the land where the Comp Facility is located. Plaintiff also alleges that Defendants James W. Comp, Comp Properties, Ltd. and Comp Dairy Farm, Ltd. have installed and operated a concentrated animal feeding facility at the Comp Facility without obtaining the required permit to install ("PTI") and permit to operate ("PTO") in violation of R.C. 903.02 and R.C. 903.03. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims of violations alleged in the Complaint.

7. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief from persons other than the Defendants for claims or conditions

alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to bring any legal or equitable action against any person other than Defendants. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief against the Defendants or any other appropriate persons for claims or conditions not alleged in the Complaint, including violations that arose, continued, or occurred after the filing of the Complaint. Nothing in this Consent Order shall be construed to relieve the Defendants of their obligations to comply with applicable federal, state, or local statutes, rules, regulations, or ordinances. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to take any action against any person, including the Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to enforce this Consent Order through a contempt action or to otherwise seek relief pursuant to the terms of the Consent Order for violations of the Consent Order.

8. This Consent Order in no way waives any defense afforded to Defendants by law in any contempt action brought by the Plaintiff. Finally, Defendants reserve all rights that they may have under Ohio's Rules of Civil Procedure.

IV. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

9. Performance of the terms of this Consent Order is not predicated on the receipt of any grant, loan, or funds from the federal or state government or private financial institution. In addition, performance of the terms of this Consent Order is not excused by the failure to obtain, or shortfall of any such grant, loan or funds, or by the processing of any applications for the same.

V. PERMANENT INJUNCTION

10. Defendants James W. Comp, Comp Dairy Farm, Ltd., and Comp Properties, Ltd. are hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 903, the rules adopted under those laws, and the terms and conditions of permits issued by the Director of the ODA, including without limitation, all future permits or modifications, or renewals issued to any Defendant. All renewals, modifications, or changes to any permit(s) issued to any Defendant by the Director of the ODA and/or effective after the entry of this Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

VI. OTHER INJUNCTIVE RELIEF

11. Defendants are enjoined to develop, submit, and, after ODA approval, implement a PTI and PTO for the Comp Facility. Defendants are to submit complete PTI and PTO applications by mail to ODA for review and approval. Defendants are prohibited from stocking more than 699 dairy cows and/or stocking more than 999 cattle other than dairy cows at the Comp Facility unless and until ODA approves and issues a PTI and PTO for the Comp Facility and ODA grants stocking approval for the Comp Facility. If Defendants fail to obtain a PTI and PTO approved and issued by ODA on or before March 15, 2011, Defendants are immediately required to reduce the design capacity of the Comp Facility to a total below 700 dairy cows and are immediately required to reduce the design capacity of other cattle, other than mature dairy cows, below 1000 cows at the Comp Facility. Each day after March 15, 2011 that the Defendants fail to reduce the design capacity as required in this Paragraph constitutes a separate violation of this provision, R.C. 903.02, and R.C. 903.03. For purposes of this Consent Order, "design capacity" has the same meaning as that in Ohio Adm. Code 901:10-1-01(X).

12. After obtaining written approval from ODA for the design, location, and environmental controls for a new stormwater/manure storage pond as a part of the PTI, Defendants are enjoined to construct a new stormwater/manure storage pond. After ODA issues the PTI and PTO, ODA approves the completion of the contaminated stormwater collection system, and the Defendants obtain approval from ODA for adequate manure storage capacity, Defendants may stock no more than 1,000 mature dairy cows until construction and approval for use of the new stormwater/manure storage pond pursuant to Ohio Adm. Code 901:10-2-01(B)(4) and this Consent Order has been granted. If construction and approval for use of the new stormwater/manure storage pond is not obtained by September 15, 2011, Defendants are immediately required to reduce the population to a total below 700 dairy cows and are immediately required to reduce the population of other cattle, other than mature dairy cows, below 1,000 cows at the Comp Facility. Each day after September 15, 2011 that the Defendants fail to reduce the population as required in this Paragraph constitutes a separate violation of this provision, R.C. 903.02, and R.C. 903.03.

13. Defendants shall comply with the terms and conditions of the August 2010 Hydrogeological Investigation Work Plan For Comp Dairy Farm, Ltd. ("Plan"), attached hereto as Exhibit A. Defendants shall also comply with the terms and conditions set forth in Paragraphs 14, 15, 16, 17, and 18 below even if these Paragraphs provide additional requirements beyond those set forth in the Plan.

14. Defendants shall submit an initial plan outlining the proposed groundwater monitoring system as part of the PTI and PTO. On or before March 15, 2011, Defendants shall determine the proposed location of each groundwater monitoring well in accordance with Paragraph 13

above; determine the actual direction of groundwater flow at the main Comp Facility and at the satellite manure storage pond; and submit preliminary groundwater direction results.

15. Defendants are enjoined to monitor groundwater at the three existing manure storage ponds and the new stormwater/manure storage pond at the Comp Facility. On or before May 15, 2011, Defendants are required to install a minimum of eight monitoring wells at the main Comp Facility and a minimum of three monitoring wells at the satellite manure storage pond after obtaining written approval from ODA for the design, location, and environmental controls for these groundwater monitoring wells. Defendants may use any properly located existing wells so long as Defendants obtain prior written approval from ODA as stated above.

16. Defendants shall monitor the groundwater at each well for total coliform and nitrates during at least three separate sampling events to determine whether contamination is present. Each sampling event shall take place at least 90 days after the prior sampling event and the third and final sampling event required by this Paragraph shall take place no later than December 15, 2011.

17. After Defendants complete the sampling events required in Paragraph 16 above, Defendants shall monitor and sample the groundwater at each well for total coliform and nitrates at a minimum of once every six months thereafter unless the sampling schedule is revised or suspended by a subsequent PTO issued by ODA.

18. The person responsible for conducting groundwater sampling required in Paragraphs 16 and 17 above shall be experienced and knowledgeable in the area of groundwater sampling and shall not be an employee of any Defendant. Defendants shall also provide a report of each sampling event that describes the methods, findings, and any concerns that the Defendants may have with the groundwater sampling results. This report shall be prepared by the person

responsible for conducting the groundwater sampling. Defendants shall promptly submit the results and report of each monitoring event for review, and Defendants shall also maintain a copy in the operating record of the Comp Facility. Defendants shall comply with any remedial action provided by ODA.

19. Defendants shall obtain written prior approval from ODA before manure is land applied on frozen and/or snow covered ground that is owned, operated, rented, leased, or controlled by the Defendants.

20. The liquid manure storage or treatment facilities at the Comp Facility shall provide for a minimum of 221 days of liquid manure storage volume based on the design capacity approved in the PTO. The 221 days of liquid manure storage volume shall also account for any additional materials or wastes brought into the Comp Facility for use in a digester at the Comp Facility.

VII. SUBMITTAL OF DOCUMENTS, NOTICES, AND SUBMITTAL REVIEW

21. All documents required to be submitted and/or notices required to be given to the ODA LEPP under this Consent Order shall be submitted to:

Ohio Department of Agriculture
Livestock Environmental Permitting Program
Attention: Kevin Elder (or his successor)
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

22. If ODA makes comments or requests revisions to the submittals required by this Consent Order, Defendants shall submit responses or revisions within thirty (30) days of receipt of comments or requests as identified above.

VIII. CIVIL PENALTY

23. Pursuant to R.C. 903.16, Defendants are ordered to pay to the State of Ohio a civil penalty of \$100,000 in two equal installments of \$50,000. The first \$50,000 payment shall be

made on or before July 31, 2011, and the second \$50,000 payment shall be made on or before December 31, 2011. The civil penalty shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," delivered by mail or otherwise, to Karen Pierson, Paralegal, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

24. In the event that Defendants fail to timely make the payments as set forth in Paragraph 23, any remaining balance of the total civil penalty shall then become immediately payable to the State in its entirety in addition to any interest accrued from the date of Defendants failure to timely make the payments as set forth in Paragraph 23 in accordance with the calculation method set forth in R.C. 5703.47.

IX. STIPULATED PENALTIES

25. In the event that Defendants violate Paragraph 11 by stocking more than 699 dairy cows and/or stocking more than 999 cattle other than dairy cows prior to (1) ODA approval and issuance of a PTI and PTO for the Comp Facility and/or (2) stocking approval for the Comp Facility from ODA, Defendants shall immediately and automatically be liable for, and shall pay a stipulated penalty of five thousand dollars (\$5,000) for each day that Defendants stock more than 699 dairy cows or stock more than 999 cattle other than dairy cows at the Comp Facility.

26. In the event that Defendants violate Paragraph 12 by stocking more than 1,000 dairy cows prior to written approval from ODA for the use of the new stormwater pond for the Comp Facility, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty of five thousand dollars (\$5,000) for each day that Defendants stock more than 699 dairy cows or stock more than 999 cattle other than dairy cows at the Comp Facility.

27. In the event that Defendants violate Paragraphs 11 and/or 12 by failing to comply with any requirement to reduce the design capacity and/or the number of dairy cows to a total below 700 dairy cows and to reduce the design capacity and/or the number of cattle other than dairy cows below 1,000 cows at the Comp Facility, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty of one thousand dollars (\$1,000) for each day that Defendants fail to reduce the design capacity and/or the number of dairy cows to a total below 700 dairy cows and to reduce the design capacity and/or the number of cattle other than dairy cows below 1,000 cows.

28. In the event that Defendants fail to meet any deadline or requirement contained in Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, or 20 except for those deadlines or requirements previously addressed in Paragraphs 25 through 27, Defendants shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of failure to meet a specified deadline or requirement, up to sixty (60) days, three hundred dollars (\$300) per day for each deadline missed or requirement not met;
- (b) For each day of failure to meet a specified deadline or requirement, from sixty-one (61) days to one hundred and twenty (120) days, five hundred dollars (\$500) per day for each deadline missed or requirement not met;
- (c) For each day of failure to meet a specified deadline or requirement, from one hundred twenty one (121) days to one hundred eighty (180) days, seven hundred fifty dollars (\$750) per day for each deadline missed or requirement not met;

(d) For each day of failure to meet a specified deadline or requirement, from one hundred eighty-one (181) days and over, one thousand dollars (\$1,000) per day for each deadline missed or requirement not met.

29. In the event that Defendants fail to meet any requirement, term, or condition of any permit issued by ODA to any Defendant, the Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule, in addition to any other penalty set forth:

(a) For each day of failure to meet a specified requirement, term, or condition up to sixty (60) days, three hundred dollars (\$300) per day for each deadline missed or requirement not met;

(b) For each day of failure to meet a specified requirement, term, or condition, from sixty-one (61) days to one hundred and twenty (120) days, five hundred dollars (\$500) per day for each deadline missed or requirement not met;

(c) For each day of failure to meet a specified requirement, term, or condition, from one hundred twenty one (121) days to one hundred eighty (180) days, seven hundred fifty dollars (\$750) per day for each deadline missed or requirement not met;

(d) For each day of failure to meet a specified requirement, term, or condition, from one hundred eighty-one (181) days and over, one thousand dollars (\$1,000) per day for each deadline missed or requirement not met.

30. Any payment of stipulated penalties required to be made under this Section of the Consent Order shall be made by delivering by mail or otherwise, a certified check for the appropriate amount made payable to the order of "Treasurer, State of Ohio" to Karen Pierson,

Paralegal, or her successor, at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 within thirty (30) days from the date of the failure to comply with this Consent Order. Defendants shall also state in writing the specific provision of the Consent Order that was not complied with and the dates of non-compliance. Payment of stipulated penalties and acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Section of the Consent Order shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 903, or to otherwise seek judicial enforcement of this Consent Order.

X. RETENTION OF JURISDICTION

31. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

XI. COURT COSTS

32. Defendants are ordered to pay the court costs of this action.

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

33. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIII. SIGNATORIES

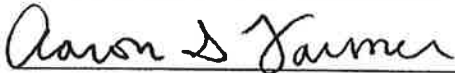
34. Each of the undersigned representatives for the parties represent that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

IT IS SO ORDERED.

DATE

APPROVED:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

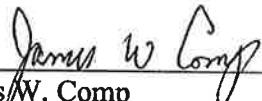


Aaron S. Farmer (0080251)
Casey L. Chapman (0086286)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Aaron.Farmer@OhioAttorneyGeneral.gov
Casey.Chapman@OhioAttorneyGeneral.gov
Counsel for the Plaintiff

Judge Gary L. Yost

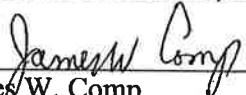
JUDGE, COURT OF COMMON PLEAS
ASHTABULA COUNTY

COMP DAIRY FARM, LTD.

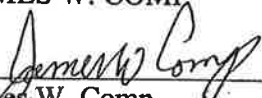


James W. Comp
Owner/Operator
Defendant

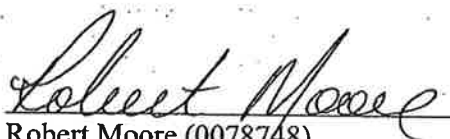
COMP PROPERTIES, LTD.



James W. Comp
Owner/Operator
Defendant
JAMES W. COMP



James W. Comp
Defendant



Robert Moore (0078748)
Wright Law Co., LPA
4266 Tuller Road, Ste. 101
Dublin, Ohio 43017-5027
Telephone: (614) 791-9112
Facsimile: (614) 791-9116
Counsel for Defendants

IN THE COURT OF COMMON PLEAS
WILLIAMS COUNTY, OHIO

FILED
COURT OF COMMON PLEAS

11C1000191

Case No.

2011 SEP 20 P 12:09

STATE OF OHIO
OHIO ATTORNEY GENERAL
MICHAEL DEWINE
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Judge

J.T. STELZER

CLERK OF COURTS
WILLIAMS COUNTY OHIO

Plaintiff,

v.

SPRINGFIELD DAIRY, LLC
17495 County Road C
Bryan, Ohio 43506

AND

ARNOLDUS DE KLEIJNE
17495 County Road C
Bryan, Ohio 43506

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

Springfield Dairy, LLC and Arnoldus De Kleijne ("Defendants") have violated the terms and conditions of the Permit To Install ("PTI"), Permit to Operate ("PTO"), and Ohio Administrative Code ("Ohio Adm. Code") Section 901:10-1-08 by transferring ownership of the dairy property without submitting a formal permit transfer request to the Ohio Department of Agriculture ("ODA") and stocking dairy cows without a stocking order issued by the ODA.

Plaintiff, the State of Ohio ("Plaintiff" or "State of Ohio"), by and through its counsel Ohio Attorney General Michael DeWine, and at the written request of the ODA Director ("Director"), hereby institutes this action against the Defendants to enforce Ohio's Concentrated

Animal Feeding Facility laws, Ohio Revised Code Chapter 903, the rules promulgated thereunder, and the operative permits.

Pursuant to Civ. R. 8(A), this complaint seeks relief in excess of twenty-five thousand dollars (\$25,000).

GENERAL ALLEGATIONS

1. Defendant Springfield Dairy, LLC is a domestic limited liability company in good standing, organized under the laws of the State of Ohio on March 18, 2004, and is authorized to transact business in the State of Ohio.

2. Defendant Springfield Dairy, LLC is a proper party to be named in this Complaint. Defendant Springfield Dairy, LLC during all relevant times to this Complaint, has been a "person" as that term is defined under R.C. 1.59 and R.C. 903.01.

3. Defendant Arnoldus De Kleijne is the sole member of Defendant Springfield Dairy, LLC. Defendant Arnoldus De Kleijne, by virtue of his position with Defendant Springfield Dairy, LLC, alone or in conjunction with others caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition or in the alternative, Defendant Arnoldus De Kleijne knew about or should have known about these violations and by himself or in conjunction with others had the authority to prevent or stop these violations but failed to exercise his authority to do so. Defendant Arnoldus De Kleijne is personally liable for these violations as alleged in this Complaint.

4. Defendant Arnoldus De Kleijne is a proper party to be named in this Complaint. Defendant Arnoldus De Kleijne, during all relevant times to this Complaint is a "person" as that term is defined in R.C. 1.59 and R.C. 903.01.

5. Based on information and belief, prior to May 25, 2006, Defendant Springfield Dairy, LLC owned and operated a dairy cow operation with fewer than 700 dairy cows located at 17495 County Road C, Bryan, Ohio 43506 in Williams County ("Springfield Dairy").

6. The ODA Livestock Environmental Permitting Program ("LEPP") administers the Concentrated Animal Feeding Facility ("CAFF") program established in R.C. Chapter 903 and the rules promulgated thereunder. The ODA LEPP Executive Director and ODA LEPP inspectors and engineers are the Director's representative(s) as stated in R.C. Chapter 903 and Ohio Adm. Code Chapter 901:10.

7. On May 25, 2006, Defendant Springfield Dairy, LLC was issued PTI No. SPR-0001.PI001.WILL and PTO No. SPR-001.PO001.WILL by the Director to expand its dairy cow operation's design capacity to confine two thousand (2,000) dairy cows. With a design capacity greater than 700 dairy cows, Springfield Dairy qualifies as a CAFF as that term is defined in R.C. 903.01.

8. From May 25, 2006 to October 2, 2009, Defendant Springfield Dairy, LLC was listed on PTI No. SPR-0001.PI001.WILL and PTO No. SPR-001.PO001.WILL as the "owner/operator," of Springfield Dairy, as defined in Ohio Adm. Code Section 901:10-1-01(OOO). From October 2, 2009 to June 13, 2011, Springfield Dairy, LLC has been listed on PTI No. SPR-0001.PI001.WILL and PTO No. SPR-001.PO001.WILL as the operator of Springfield Dairy. From June 14, 2011 to the present, Springfield Dairy, LLC has been listed on PTI No. SPR-0001.PI001.WILL and PTO No. SPR-001.PO001.WILL as the "owner/operator," of Springfield Dairy.

9. Springfield Dairy Leasing, LLC acquired the Springfield Dairy property from Defendants on September 1, 2006 and owned Springfield Dairy until on or about August 6, 2010.

10. Ohio Adm. Code 901:10-1-10(G) prohibits a person from violating the terms and conditions of a PTI, PTO, review compliance certificate, or a National Pollutant Discharge Elimination System Permit.

11. Ohio Revised Code 903.16(C) grants the Director the authority to request the Ohio Attorney General, in writing, to bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate R.C. 903.02, R.C. 903.03, or R.C. 903.04; the terms and conditions of a PTI, PTO, or review compliance certificate, including the requirements established under R.C. 903.06(C) or R.C. 903.07(A); rules adopted under R.C. 903.10(A); or an order issued under R.C. 903.16(B).

12. Ohio Revised Code 903.16(D)(1) grants the Director the authority to request the Ohio Attorney General, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a PTI, PTO, or review compliance certificate, including the requirements established under R.C. 903.06(C) or R.C. 903.07(A).

13. Ohio Revised Code 903.16(D)(2) grants the Director the authority to request the Ohio Attorney General, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating R.C. 903.02, R.C. 903.03, or R.C. 903.04, rules adopted under R.C. 903.10(A), or an order issued under R.C. 903.16(B).

14. Pursuant to R.C. 903.16(D)(3), a person who has committed a violation for which the Ohio Attorney General may bring an action for a civil penalty under R.C. 903.16(D)(1) or (2) shall pay a civil penalty of not more than ten thousand dollars (\$10,000.00) per violation. Each day that a violation continues constitutes a separate violation.

15. The general allegations set forth in paragraphs one (1) through fourteen (14) are hereby incorporated into each count as if restated therein.

COUNT ONE

**DEFENDANTS VIOLATED OHIO ADM. CODE 901:10-1-08 BY FAILING TO
TRANSFER PERMITS PRIOR TO TRANSFERRING PROPERTY OWNERSHIP**

16. Ohio Administrative Code 901:10-1-08 sets forth the process and information required to be submitted to the ODA for a permit transfer. Specifically, Ohio Adm. Code 901:10-1-08 requires the transferor to notify the Director in writing at least 30 days prior to any proposed transfer of a permit and requires the transferee to inform the Director that it will assume the responsibilities of the transferor.

17. Springfield Dairy Leasing, LLC acquired the dairy farm property on September 1, 2006 from Defendant Springfield Dairy, LLC. Defendant Springfield Dairy, LLC failed to submit a permit transfer request to the Director at least 30 days prior to transferring the permits as reflected by the transfer of property ownership of the Springfield Dairy to the new "owner," Springfield Dairy Leasing, LLC.

18. Defendant Springfield Dairy, LLC failed to obtain approval from the Director for the permit transfer until October 2, 2009.

19. The conduct alleged in this Count is a violation of Ohio Adm. Code 901:10-1-08 and Ohio Adm. Code Section 901:10-1-10(G) for which Defendants are subject to injunctive relief and are liable to pay the State of Ohio civil penalties of up to ten-thousand (\$10,000) dollars per violation pursuant to R.C. 903.16.

COUNT TWO

**DEFENDANTS VIOLATED THE TERMS AND CONDITIONS OF THE PTI AND THE
DIRECTOR'S ORDER ISSUING THE PTI AND PTO BY THE UNAUTHORIZED
STOCKING OF COWS**

20. Permit to Install No. SPR-0001.PI001.WILL prohibits stocking animals authorized by the PTO until the requirements of Ohio Adm. Code Section 901:10-2-01 are satisfied, specifically: a) the submittal to the ODA of a notarized statement certifying that the facility was constructed in accordance with the design plans; b) submittal of completed and approved as-builts plans; and c) an inspection of the facilities by the ODA after construction.

21. From on or about July 19, 2007 continuing through October 23, 2007, Defendants stocked more than 700 dairy cows prior to the submission of the notarized statement certifying that the facility was constructed in accordance with design plans; submission of the completed and approved as-built plans; and/or obtaining an ODA inspection approving the construction of the Springfield Dairy.

22. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. SPR-0001.PI001.WILL and PTO No. SPR-001.PO001.WILL, for which Defendants are subject to injunctive relief and are liable to pay the State of Ohio civil penalties of up to ten-thousand (\$10,000) dollars per violation pursuant to R.C. 903.16.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant relief by doing the following:

A. Issue an injunction permanently enjoining Defendants from violating R.C. Chapter 903, the rules promulgated or adopted under the laws, and the permits issued pursuant to the laws and rules;

B. Order Defendants to develop, submit, and implement, after ODA approval, a renewal PTO for Springfield Dairy. By no later than the public notice date for the draft renewal PTO, Defendants shall submit their request and obtain, after ODA approval, a transfer of the PTO from Springfield Dairy Leasing, LLC to Springfield Dairy, LLC.

C. Order Defendants to develop, submit, and, after ODA approval, implement a permanent silage pad leachate containment system on or before October 1, 2011, and at least thirty days prior to planned construction, Defendants shall develop and submit complete design plans to ODA for approval.

D. Order Defendants, pursuant to R.C. 903.16, to pay to the State civil penalties of up to ten thousand dollars (\$10,000) per day for each day it has violated or hereafter violates R.C. Chapter 903, the rules promulgated thereunder, or the operative permits, as described in Counts One and Two of this Complaint;

E. Order Defendants to pay all costs and fees for this action, including attorneys' fees and enforcement costs incurred by the Ohio Attorney General's Office;

F. Retain jurisdiction of this suit for the purpose of making any order or decree which this Court may deem necessary at any time to carry out its judgment; and

G. Grant such relief as this Court may deem necessary and appropriate.

Respectfully submitted,

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

Aaron S. Farmer

Aaron S. Farmer (0080251)

Trial Attorney

Assistant Attorney General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215-3400

Telephone (614) 466-2766

Facsimile (614) 644-1926

Aaron.Farmer@OhioAttorneyGeneral.gov

Attorney for Plaintiff, State of Ohio

IN THE COURT OF COMMON PLEAS
WILLIAMS COUNTY, OHIO

STATE OF OHIO, ex rel.,
MICHAEL DEWINE
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

Springfield Dairy, LLC, et al.,

Defendants.

Case No. 11C1000191

Judge
J.T. STELZER

FILED
COURT OF COMMON PLEAS
2011 SEP 20 P 1:10
CLERK OF COURTS
WILLIAMS COUNTY OHIO

CONSENT ORDER

The Complaint in the above-captioned matter having been filed, and Plaintiff, State of Ohio, by its Attorney General Michael DeWine ("Plaintiff") and Defendants Springfield Dairy, LLC and Arnoldus De Kleijne ("Defendants") having consented to the entry of this Order,

NOW, THEREFORE, without trial of any issue of fact or law, without admission of liability by Defendants and upon the consent of the Parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this case pursuant to the Ohio Revised Code ("R.C.") Chapter 903. The Complaint states a claim upon which relief can be granted against the Defendants pursuant to R.C. Chapter 903. Venue is proper in this Court.

JOURNAL 562 PAGE 228
JOURNALIZED DATE 9-20-11

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Parties to this action, all current and subsequent owner(s) and/or operator(s) of the Springfield Dairy, and all successors in interest to the owner(s) and/or operator(s) of the Springfield Dairy Facility, which is located at 17495 County Road C, Bryan, Williams County, Ohio 43506, and upon their officers, agents, servants, employees, successors, and assigns, and those persons in concert or privity with them.
3. Defendants and successors in interest of the Springfield Dairy Facility shall give at least thirty (30) days notice to the Ohio Department of Agriculture ("ODA") Livestock Environmental Permitting Program ("LEPP") before the sale or transfer of ownership of the facility.
4. Defendants shall provide a copy of this Consent Order to all successors in interest and/or any subsequent owner(s) and/or operator(s) of the Springfield Dairy Facility prior to the transfer of Defendants' ownership rights.
5. No change in ownership or status of Defendants, including but not limited to any transfer of assets or personal property, shall in any way alter Defendants' rights or obligations under this Consent Order.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. Plaintiff alleges in its Complaint that the Defendants have committed various violations of R.C. Chapter 903, Ohio Administrative Code Chapter 901:10, and permits and orders issued pursuant thereto. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims of violations alleged in the Complaint up to the date of the entry of this Consent Order.

7. Defendants do not admit the allegations set forth in the Plaintiff's Complaint and deny any violation of local, state, or federal statute, regulation or common law.

8. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief from persons other than the Defendants for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to bring any legal or equitable action against any person other than Defendants. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief against the Defendants or any other appropriate persons for claims or conditions not alleged in the Complaint, including violations that arise, continue, or occur after the filing of the Complaint. Nothing in this Consent Order shall be construed to relieve the Defendants of their obligations to comply with applicable federal, state, or local statutes, rules, regulations, or ordinances. Further, nothing in this Consent Order shall be construed as to limit the authority of the Plaintiff to take any action against any person, including the Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to enforce this Consent Order through a contempt action or to otherwise seek relief pursuant to the terms of the Consent Order for violations of the Consent Order or other subsequent violations of law by the Defendants. This Consent Order in no way waives any defenses afforded to Defendants by law in any contempt action brought by the Plaintiff. Finally, Defendants reserve all rights that they may have under Ohio's Rules of Civil Procedure.

IV. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

9. Performance of the terms of this Consent Order is not predicated on the receipt of any grant, loan or funds from the federal or state government or private financial institution. In

addition, performance of the terms of this Consent Order is not excused by the failure to obtain, or shortfall of, any such grant, loan or funds, or by the processing of any applications for the same.

V. PERMANENT INJUNCTION

10. Defendant Springfield Dairy, LLC is hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 903, the rules adopted under those laws, and the terms and conditions of permits issued by the Director of the ODA. All future permits, renewals, modifications or changes to any permit(s) issued to Defendant Springfield Dairy, LLC by the Director of the ODA and/or effective after the entry of this Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

VI. SPECIFIC INJUNCTION

11. Defendant Springfield Dairy, LLC is enjoined to develop, submit, and implement, after ODA approval, a renewal PTO for Springfield Dairy. By no later than the public notice date for the draft renewal PTO, Defendant Springfield Dairy, LLC shall submit its request and obtain, after ODA approval, a transfer of the PTO from Springfield Dairy Leasing, LLC to Springfield Dairy, LLC.

12. Defendant Springfield Dairy, LLC is enjoined to develop, submit, and, after ODA approval, implement a permanent silage pad leachate containment system on or before December 1, 2011.

VII. SUBMITTAL OF DOCUMENTS, NOTICES, AND SUBMITTAL REVIEW

13. All documents required to be submitted and/or notices required to be given to the Ohio Department of Agriculture Livestock Environmental Permitting Program under this Consent Order shall be submitted to:

Ohio Department of Agriculture
Livestock Environmental Permitting Program
Attention: Kevin Elder (or his successor)
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

14. If ODA makes comments or requests revisions to the submittals under any paragraph of this Consent Order, Defendant Springfield Dairy, LLC shall submit responses or revisions within thirty (30) days of receipt of comments or requests to Kevin Elder, or his successor.

VIII. CIVIL PENALTY

15. Defendant Springfield Dairy, LLC is ordered to pay to the State of Ohio the total amount of \$11,000.00. Unless otherwise agreed by the parties, payments shall be made in 22 consecutive monthly installments of \$500.00. The first monthly installment shall be due on or before October 31, 2011, and each subsequent installment shall be due on the last business day of the next 21 months. All payments shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," delivered by mail or otherwise, to Karen Pierson, Paralegal, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

16. In the event that Defendant Springfield Dairy, LLC fails to timely make the payments as set forth in Paragraph 15, any remaining balance of the total civil penalty shall then become immediately payable to the State in its entirety.

IX. ENFORCEMENT COSTS

17. Defendant Springfield Dairy, LLC shall pay the enforcement costs of the Ohio Attorney General expended prior to the entry of this Consent Order, by delivering a certified check in the amount of \$500.00 on or before September 30, 2011, made payable to the order of "Treasurer, State of Ohio" to Karen Pierson, or her successor, at the Office of the Ohio Attorney General,

Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.
"Ohio Attorney General's Office – Enforcement Costs" shall appear on the face of the check.
Any check submitted in compliance with this Section of this Consent Order shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

X. STIPULATED PENALTIES

18. Except for those requirements previously addressed in Paragraphs 15 and 16, in the event that Defendant Springfield Dairy, LLC fails to meet any requirement of the terms and conditions of this Consent Order set forth in Paragraphs 10, 11, 12, and/or 17, or the terms and conditions of permits issued by the Director of the ODA including without limitation, all future permits or modifications or renewals issued to Defendant Springfield Dairy, LLC, Defendant Springfield Dairy, LLC shall be liable for, and shall immediately and automatically pay a stipulated penalty according to the following payment schedule:

- (a) For each day of failure to meet a specified deadline or requirement, up to sixty (60) days, one hundred dollars (\$100.00) per day for each deadline missed or requirement not met;
- (b) For each day of failure to meet a specified deadline or requirement, from sixty-one (61) days to one hundred and twenty (120) days, three hundred dollars (\$300.00) per day for each deadline missed or requirement not met;
- (c) For each day of failure to meet a specified deadline or requirement, from one hundred twenty one (121) days to one hundred eighty (180) days, six hundred dollars (\$600.00) per day for each deadline missed or requirement not met;

(d) For each day of failure to meet a specified deadline or requirement, from one hundred eighty-one (181) days and over, eight hundred dollars (\$800.00) per day for each deadline missed or requirement not met.

19. Any payment of stipulated penalties required to be made under this Section of the Consent Order shall be made by delivering by mail or otherwise, a certified check for the appropriate amount made payable to the order of "Treasurer, State of Ohio" to Karen Pierson, Paralegal, or her successor, at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 within thirty (30) days from the date of the failure to comply with this Consent Order. Defendant Springfield Dairy, LLC shall also state in writing the specific provision of the Consent Order that was not complied with and the dates of non-compliance. Payment of stipulated penalties and acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Section of the Consent Order shall not be construed to limit Plaintiff's authority to seek additional relief for the violations giving rise to the stipulated penalties pursuant to R.C. Chapter 903, or to otherwise seek judicial enforcement of this Consent Order.

XI. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

XII. COURT COSTS

21. Defendant Springfield Dairy, LLC is ordered to pay the court costs of this action.

XIII. MODIFICATION

22. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon the Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XV. SIGNATORIES

24. Each of the undersigned representatives for the Parties represent that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

IT IS SO ORDERED.

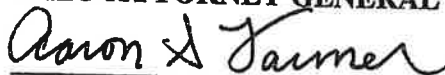
DATE 9/20/11



JUDGE, COURT OF COMMON PLEAS
WILLIAMS COUNTY

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



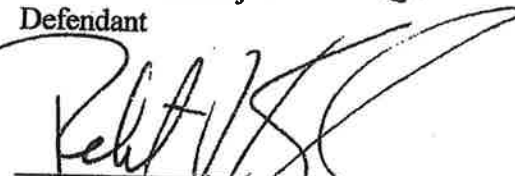
By: Aaron S. Farmer, Trial Attorney (0080251)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Aaron.Farmer@OhioAttorneyGeneral.gov
Counsel for the Plaintiff

SPRINGFIELD DAIRY, LLC



By: Arnoldus De Kleijne
Title: Manager of Springfield Dairy, LLC
Defendant


Arnoldus De Kleijne
Defendant


Robert J. Karl, Trial Attorney (0042292)
Ulmer & Berne, LLP
88 E. Broad St.
Suite 1600
Columbus, Ohio 43215
Telephone: (614) 229-0010
Counsel for Defendants
Springfield Dairy, LLC and Arnoldus De
Kleijne

IN THE COURT OF COMMON PLEAS
PUTNAM COUNTY, OHIO

COMMON PLEAS COURT
TERESA J. LAMERS, CLERK
PUTNAM COUNTY, OHIO

2011 MAR - 1 P 1:19

STATE OF OHIO
MICHAEL DEWINE
OHIO ATTORNEY GENERAL
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Plaintiff,

v.

Jan Van Ham
7089 Road 22
Continental, Ohio 45831

AND

Van Ham Dairy, LLC
7089 Road 22
Continental, Ohio 45831

Case No. 2011 CV 47

Judge R. Basinger

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

The operation of a concentrated animal feeding facility with over 2,000 animals requires strict environmental and operational controls. Defendant Van Ham Dairy, LLC and Defendant Jan Van Ham failed to follow applicable rules, their permit terms, and even expanded their operations without permission from the Ohio Department of Agriculture ("ODA"). In doing so Defendants have endangered public health and the environment and have violated Ohio Revised

Code ("R.C.") Chapter 903, the applicable rules promulgated thereunder, and the permits issued to them by the ODA.

Therefore, Plaintiff, the State of Ohio ("Plaintiff" or "State of Ohio"), by and through its Attorney General Michael DeWine, at the written request of the Director of the ODA ("Director"), hereby institutes this action against the Defendants to enforce R.C. Chapter 903 and Chapter 901:10 of the Ohio Adm. Code.

Pursuant to Civ. R. 8(A), this Complaint seeks relief in excess of twenty-five thousand dollars (\$25,000).

I. GENERAL ALLEGATIONS

1. Van Ham Dairy, the dairy farm that is the subject of the Complaint, is located at 7089 Township Road, Continental, Putnam County, Ohio 45831.
2. The dairy farm stables, confines, feeds and maintains approximately 2,250 dairy cows, which are "agricultural animals" as that phrase is defined by R.C. 903.01(A) and (D).
3. The dairy farm is a concentrated animal feeding facility ("CAFF"), as that phrase is defined by R.C. 903.01(E) and (M)(1).
4. Defendant Van Ham Dairy, LLC is a proper party to this Complaint and, at all times relevant to this Complaint, is a "person" as that term is defined in R.C. 1.59 and R.C. 903.01.
5. Defendant Van Ham Dairy, LLC is a for-profit Domestic Limited Liability Company incorporated on December 30, 1999 under the laws of the State of Ohio.
6. A certificate of Amendment to the Articles of Organization of a Limited Liability Company was filed to change the name of Gina Dairy, LLC, incorporated on December 30, 1999, to Van Ham Dairy, LLC on April 9, 2001.

7. Defendant Van Ham Dairy, LLC transacts business in and maintains sufficient minimum contacts with the State of Ohio.
8. An operating agreement for Defendant Van Ham Dairy, LLC was executed on or about July 17, 2001, which granted equal membership of Defendant Van Ham Dairy, LLC to Defendant Jan Van Ham and Anja Van Ham.
9. On December 5, 2006, Defendant Van Ham Dairy, LLC sold the dairy farm to Van Ham Dairy Leasing, LLC. Prior to December 5, 2006, Defendant Van Ham Dairy, LLC was an "owner or operator," as that phrase was defined by Ohio Adm. Code 901:10-1-01, of the CAFF. From December 5, 2006 through the present, through its actions, Defendant Van Ham Dairy, LLC remained an "operator," as that term is defined by Ohio Adm. Code 901:10-1-01, of the CAFF.
10. Defendant Jan Van Ham is a proper party to this Complaint and at all times relevant to this Complaint, is a "person" as that term is defined in R.C. 1.59 and R.C. 903.01.
11. At all times relevant to the Complaint, Defendant Jan Van Ham has been a member of Defendant Van Ham Dairy, LLC.
12. Based on information and belief, prior to December 5, 2006, Defendant Jan Van Ham, through his personal actions and through his actions as a member of Defendant Van Ham Dairy, LLC, was an "owner or operator," as that phrase was defined by Ohio Adm. Code 901:10-1-01, of the CAFF. From December 5, 2006 through the present, Defendant Jan Van Ham, through his personal actions and through his actions as a member of Defendant Van Ham Dairy, LLC, has been an "operator," as that term is defined by Ohio Adm. Code 901:10-1-01, of the CAFF.
13. The Ohio Department of Agriculture ("ODA") Livestock Environmental Permitting Program ("LEPP") administers the CAFF program established in R.C. Chapter 903 and the rules

promulgated thereunder in Ohio Adm. Code Chapter 901:10. The ODA LEPP Executive Director and ODA LEPP inspectors and engineers are the Director's representative(s) as stated in R.C. Chapter 903 and Ohio Adm. Code Chapter 901:10.

14. On November 26, 2003, the Director of ODA issued Permit To Install ("PTI") No. VAN-0001.PI001-PUTN and Permit to Operate ("PTO") No. VAN-0001.PO001-PUTN to Defendant Jan Van Ham and Anja Van Ham, the "owners/operators" of Van Ham Dairy on the permit, as representatives of Defendant Van Ham Dairy, LLC.
15. The November 26, 2003 PTI was issued for three free-stall barns, one fabricated structure for manure and stormwater storage, and one earthen manure/stormwater storage pond.
16. Ohio Revised Code 903.16(C) grants the Attorney General, at the written request of the Director, authority to bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate R.C. 903.02, R.C. 903.03, or R.C. 903.04; the terms and conditions of a PTI, PTO, or review compliance certificate, including the requirements established under R.C. 903.06(C) or R.C. 903.07(A); rules adopted under R.C. 903.10(A); or an order issued under R.C. 903.16(B).
17. Ohio Revised Code 903.16(D)(1) grants the Attorney General, at the written request of the Director, authority to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a PTI, PTO, or review compliance certificate, including the requirements established under R.C. 903.06(C) or R.C. 903.07(A).
18. Ohio Revised Code 903.16(D)(2) grants the Attorney General, at the written request of the Director, authority to bring an action for a civil penalty in a court of competent jurisdiction

against any person that has violated or is violating R.C. 903.02, R.C. 903.03, or R.C. 903.04, rules adopted under R.C. 903.10(A), or an order issued under R.C. 903.16(B).

19. "Land application area," currently defined in Ohio Adm. Code 901:10-1-01(TT), means land under the control of a concentrated animal feeding operation, whether it is owned, rented, leased or otherwise under the control of the owner or operator, to which manure or process wastewater from the production area is or may be applied.

20. "Manure," as defined in R.C. 903.01(O), means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.

21. "Manure storage or treatment facility," as defined in Ohio Adm. Code 901:10-1-01(CCC), means any excavated, diked or walled structure or combination of structures designed for the biological stabilization, holding or storage of manure. These facilities include manure storage ponds, manure treatment lagoons, fabricated structures, stormwater ponds, egg wash lagoons, manure storage sheds, stockpiles, under house or pit storages, and composting areas.

22. "Manure storage pond," as defined in Ohio Adm. Code 901:10-1-01(DDD), means a type of manure storage or treatment facility consisting of an earthen impoundment made by constructing an embankment and/or excavating a pit, the purpose of which is to store or settle manure. A manure storage pond contains liquid manure.

23. Ohio Administrative Code 901:10-1-10(G) prohibits any person from violating the terms and conditions of a PTI and/or a PTO issued by the ODA.

24. All rules from Ohio Adm. Code Chapter 901:10 cited in this Complaint were adopted pursuant to R.C. 903.10.

25. The manure management plan and the insect and rodent control plan of PTO No. VAN-0001.PO001.PUTN satisfy and provide the requirements of Ohio Adm. Code Chapter 901:10.

26. The general allegations set forth in paragraphs one (1) through twenty-five (25) are hereby incorporated into each count as if restated therein.

II. COUNTS

COUNT ONE

DEFENDANTS VIOLATED THE TERMS AND CONDITIONS OF THE PTI AND PTO BY FAILING TO TRANSFER PERMITS PRIOR TO TRANSFERRING PROPERTY OWNERSHIP

27. Ohio Adm. Code Section 901:10-1-08 sets forth the process and information required to be submitted to the ODA for a permit transfer. Specifically, Ohio Adm. Code 901:10-1-08 requires the transferor to notify the Director in writing at least 30 days prior to any proposed transfer of a permit and requires the transferee to inform the Director that it will assume the responsibilities of the transferor.

28. Van Ham Dairy Leasing, LLC acquired the Van Ham Dairy on December 5, 2006. Defendant Van Ham Dairy, LLC and Defendant Jan Van Ham failed to submit a permit transfer request to the Director at least 30 days prior to the transfer of the facility to the new owner, Van Ham Dairy Leasing, LLC.

29. Based on information and belief, on February 22, 2007, ODA was first notified that Defendant Van Ham Dairy, LLC intended to transfer its PTI and PTO for ownership of the dairy farm to Van Ham Dairy Leasing, LLC.

30. The conduct alleged in this Count is a violation of Ohio Adm. Code 901:10-1-08 and Ohio Adm. Code Section 901:10-1-10(G), for which Defendants are subject to injunctive relief pursuant to R.C. Section 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (\$10,000) dollars per violation for each day of each violation,.

COUNT TWO

DEFENDANTS VIOLATED THE TERMS AND CONDITIONS OF THE PTI BY CONSTRUCTING TWO FREE-STALL BARNS BEFORE THE TERMS OF THE PTI ALLOWED

31. Permit to Install No. VAN-0001.PI001-PUTN expressly provides that the construction for Van Ham Dairy shall be in two phases and that the two freestall barns shall be constructed in Phase Two.

32. Permit to Install No. VAN 0001.PI001.PUTN presents three prerequisites that must take place before construction of the two free-stall barns may commence. First, the construction of the stormwater controls must be completed. Second, the construction of a new earthen manure storage pond must be completed. Finally, a notarized statement verifying that the stormwater controls and the earthen manure storage pond were completed according to design plans along with a copy of the completed and approved as-built plans must be submitted to ODA.

33. Ohio Department of Agriculture personnel observed the construction of two new free-stall barns with roofs built on March 22, 2007. By this date, Defendants had not submitted the required notarized statement verifying that the stormwater controls and the earthen manure storage pond were completed according to design plans along with a copy of the completed and approved as-built plans.

34. Based on information and belief, the construction of the two free-stall barns continued, and the two new freestall barns had been stocked with cows by April 10, 2008.
35. The Ohio Department of Agriculture did not receive a notarized statement verifying that the stormwater controls and the earthen manure storage pond were constructed according to the design plans with a copy of the completed and approved as-built plans before the free-stall barn construction in 2007 and the stocking of cows in 2008.
36. The conduct alleged in this Count is a violation of the terms and conditions of PTI No. VAN-0001.PI001-PUTN and Ohio Adm. Code 901:10-1-10(G), for which Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (\$10,000) dollars per violation for each day of each violation.

COUNT THREE

DEFENDANTS VIOLATED R.C. 903.02 AND THE TERMS AND CONDITIONS OF THE PTI BY INCREASING THE LARGE STORMWATER POND BEYOND THE DIMENSIONS SET FORTH IN THE PTI WITHOUT AUTHORIZATION

37. The Appendix to Ohio Adm. Code 901:10-1-09 classifies as "a major operational change" any change to a manure storage or treatment facility that is less than a ten percent change of the total design capacity. Ohio Adm. Code 901:10-1-09 prohibits an owner or operator from commencing any changes proposed in the planned major operational change submitted to ODA until ODA has approved the planned major operational change and has notified the owner or operator in writing of such approval.
38. Permit to Install No. VAN-0001.PI001-PUTN states that one manure storage pond ("large stormwater pond") has 225,000 cubic feet or the capacity to hold 1.68 million gallons of stormwater.

39. On August 14, 2006, ODA personnel observed that a smaller manure storage pond designed to hold stormwater ("small stormwater pond") had been removed at the Van Ham Dairy, directing all of the stormwater to flow to the large stormwater pond.

40. On August 17, 2007, an as-built survey of the large stormwater pond was provided to ODA, which confirmed that the capacity increased from 1.68 million gallons to 2.3 million gallons. Defendants had failed to submit any information related to a request for the expansion of the large stormwater pond prior to August 17, 2007.

41. The conduct alleged in this Count is a violation of the terms and conditions of PTI No. VAN-0001.PI001.PUTN, Ohio Adm. Code 901:10-1-09, and Ohio Adm. Code 901:10-1-10(G), for which Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (\$10,000) dollars per violation for each day of each violation.

COUNT FOUR

DEFENDANTS VIOLATED THE TERMS AND CONDITIONS OF THE PTI BY FAILING TO INSTALL A DEPTH MARKER IN THE LARGE STORMWATER POND, MANURE STORAGE POND 1, AND MANURE STORAGE POND 2

42. Ohio Adm. Code 901:10-2-06 requires an owner or operator to install a depth marker or other appropriate device in the interior of the manure storage pond or manure treatment lagoon to monitor manure levels if a depth marker or other appropriate device has not already been installed.

43. Ohio Adm. Code 901:10-2-08 sets forth that each manure storage or treatment facility must have a depth marker or other appropriate device which clearly indicates the minimum capacity necessary to contain a runoff and direct precipitation event.

44. Permit to Install No. VAN-0001.PI001.PUTN requires Defendants to install and maintain a depth marker in the large stormwater pond, manure storage pond 1, and manure storage pond 2, as set forth in the engineering plans.
45. Beginning on or about April 6, 2006 and continuing until on or about July 23, 2008, and on other dates currently unknown to Plaintiff, Defendants failed to install, possess, and/or maintain a depth marker for the large stormwater pond as required.
46. Beginning on or about April 10, 2008 and continuing until on or about April 29, 2009, and on other dates currently unknown to Plaintiff, Defendants failed to install, possess, and/or maintain a depth marker for the manure storage pond 1 as required.
47. Beginning on or about April 10, 2008 and continuing until August 25, 2010, and on other dates currently unknown to Plaintiff, Defendants failed to install, possess, and/or maintain a depth marker for the manure storage pond 2 as required.
48. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10(G), and the terms and conditions of PTI No. VAN-0001.PI001.PUTN, for which Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT FIVE

DEFENDANTS VIOLATED DIRECTOR'S ORDERS BY FAILING TO TIMELY INSTALL WATER METERS AND A GROUND WATER MONITORING SYSTEM

49. The Director issued and journalized Order No. 2007-412 on October 17, 2007, which required Defendants to install five water meters to measure the water flow at the dairy facility on

or before January 15, 2008, 90 days from the issuance and journalization date of the Director's Order No. 2007-412.

50. Director's Order No. 2007-412 also required Defendants to submit a ground water monitoring plan for ODA approval on or before February 14, 2008, 120 days from the issuance and journalization date of the Director's Order No. 2007-412. After the Defendants obtained ODA approval, the Director's Order No. 2007-412 required Defendants to install ground water monitoring wells within 90 days.

51. On February 27, 2008, the Director amended Director's Order No. 2007-412 to require the Defendants to install the five water meters required under the Order by a new deadline, April 15, 2008. However, this Amended Order No. 2007-412 did not change the requirements or deadlines for the ground water monitoring plan approval and ground water monitoring well system installation set forth above in Director's Order No. 2007-412.

52. On February 29, 2008, ODA approved the Defendants' ground water monitoring well system. Therefore, the Defendants were required to install the two proposed ground water monitoring wells on or before May 29, 2008, 90 days from February 29, 2008, pursuant to Director's Order No. 2007-412.

53. On or about July 23, 2008, an ODA inspector discovered that Defendants had failed to install all five water meters and two ground water monitoring wells as required by the Director's Order No. 2007-412 and the amendment thereto.

54. The conduct alleged in this Count constitutes violations of the October 17, 2007 Director's Order No. 2007-412 and the February 27, 2008 Amended Director's Order, for which the Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars

per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT SIX

**DEFENDANTS VIOLATED THE TERMS AND CONDITIONS OF THE PTO BY
FAILING TO MAINTAIN ADEQUATE OPERATING LEVELS AT MANURE
STORAGE POND 1, MANURE STORAGE POND 2, AND THE LARGE
STORMWATER POND**

55. Ohio Adm. Code 901:10-2-06 sets forth the design and maintenance requirements for manure storage or treatment facilities.
56. Ohio Adm. Code 901:10-2-08 sets forth the items that are to be inspected, performed, monitored, or maintained at a manure storage or treatment facility, and documented in the operating record.
57. Ohio Adm. Code 901:10-2-08 requires that the maximum operating level of a manure storage or treatment facility shall not exceed that specified in the manure management plan of each PTO.
58. The manure management plan in PTO No. VAN-0001.PO001.PUTN, through references to PTI No. VAN-0001.PI001.PUTN, states that the maximum operating level permitted for the manure storage pond 1 is 10.4 feet; the maximum operating level permitted for the manure storage pond 2 is 22.4; and the maximum operating level for the large stormwater pond is 4.2 feet as calculated by ODA due to Defendants' failure to submit as-built plans.
59. On or about June 25, 2007, an ODA inspector discovered that the large stormwater pond was operating above the permitted maximum operating level and that the storm water had escaped into an inlet pipe and flowed into a collection basin.
60. On or about June 23, 2008, an ODA inspector discovered that manure storage pond 2 and the large stormwater pond were both operating above the permitted maximum operating levels.

61. On or about April 29, 2009, an ODA inspector discovered that manure storage pond 1 and manure storage pond 2 were both operating above the permitted maximum operating levels.
62. On or about May 27, 2009, an ODA inspector discovered that manure storage pond 2 and the large stormwater pond were both operating above the permitted maximum operating levels.
63. On or about June 24, 2009, an ODA inspector discovered that manure storage pond 2 and the large stormwater pond were both operating above the permitted maximum operating levels.
64. On or about June 8, 2010, an ODA inspector discovered that manure storage pond 2 and the large stormwater pond were both operating above the permitted maximum operating levels.
65. On or about July 9, 2010, an ODA inspector discovered that manure storage pond 1 and the large stormwater pond were both operating above the permitted maximum operating levels.
66. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, the terms and conditions of PTO No. VAN-0001.PO001.PUTN and PTI No. VAN-0001.PO001.PUTN, and Ohio Adm. Code 901:10-1-10(G), for which Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT SEVEN

DEFENDANTS VIOLATED THE REVISED AND ADMINISTRATIVE CODES BY
FAILING TO SUBMIT A TIMELY APPLICATION FOR PERMIT RENEWAL

67. Ohio Revised Code 903.03(G) requires an owner and/or operator intending to renew the PTO to submit an application for renewal within 180 days of the expiration date of the PTO.
68. Ohio Adm. Code 901:10-1-02(C)(2)(b) also requires an owner and/or operator intending to renew the PTO to submit an application for PTO renewal within 180 days of the expiration date of the PTO.
69. Pursuant to Ohio Revised Code 903.03(F), a PTO expires five years from the issuance date.
70. The Director issued PTO No. VAN-0001.PO001.PUTN on November 26, 2003. Therefore, the scheduled expiration date of the PTO for Van Ham Dairy was November 26, 2008, five years after November 26, 2003. Accordingly, the Defendants were required to submit an application for the renewal PTO on or before May 30, 2008.
71. Defendants submitted an application to renew the PTO No. VAN-0001.PO001.PUTN on September 9, 2008, 102 days after the required submittal date of May 30, 2008.
72. The conduct alleged in this Count constitutes violations of R.C. 903.03(G) and Ohio Adm. Code 901:10-1-02, for which Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation.

COUNT EIGHT

**DEFENDANTS VIOLATED THE TERMS AND CONDITIONS OF THEIR PTO BY
FAILING TO COMPLY WITH INSPECTION AND RECORDKEEPING
REQUIREMENTS**

73. Ohio Adm. Code 901:10-2-08 sets forth the inspection, maintenance and monitoring requirements of a manure management plan.
74. Ohio Adm. Code 901:10-2-13 sets forth the requirements of a manure management plan for the soil characteristics of a land application area including sampling and recordkeeping requirements.
75. Ohio Adm. Code 901:10-2-14 sets forth the requirements of a manure management plan for the land application of manure on land application areas.
76. Ohio Adm. Code 901:10-2-19 sets forth the insect and rodent control plan requirements for a manure management plan.
77. Pursuant to the foregoing Administrative Code rules, the owner and/or operator of a CAFF must maintain and document inspections, maintenance, and monitoring information in an operating record as part of a PTO and present the operating record to ODA upon inspection.
78. Ohio Adm. Code 901:10-2-08 and PTO No. VAN-0001.PO001.PUTN require that Defendants maintain, operate, inspect, and document manure operating levels; groundwater manure samples; soil samples; erosion, leakage, animal damage, and emerging vegetation; stormwater conveyances, diversion devices, runoff diversion structures, and devices channeling contaminated stormwater to the manure storage pond or manure treatment lagoon; manure application equipment; and water lines and/or water meters.

79. Ohio Adm. Code 901:10-2-13 and PTO No. VAN-0001.PO001.PUTN require Defendants to collect soil samples of the land application areas and document the results in the operating record.
80. Ohio Adm. Code 901:10-2-14 and PTO No. VAN-0001.PO001.PUTN require Defendants to document in the operating record the date, rate, quantity, and method of land application of the nutrient and/or form and source of manure, commercial fertilizer, and/or other organic by-products.
81. Ohio Adm. Code 901:10-2-19 and PTO No. VAN-0001.PO001.PUTN require the Defendants to inspect on a daily basis and repair any water line or water well leaks.
82. Ohio Adm. Code 901:10-2-16 and PTO No. VAN-0001.PO001.PUTN require Defendants to maintain accurate documentation of the inspection of manure operating levels; the accurate documentation of groundwater manure samples and/or soil samples; the accurate documentation of the inspection of manure storage or treatment facilities for erosion, leakage, animal damage, and emerging vegetation; the accurate documentation of inspection of stormwater conveyances, diversion devices, runoff diversion structures, and devices channeling contaminated stormwater to the manure storage pond or manure treatment lagoon; the accurate documentation of inspection of water lines and/or water meters; and the accurate documentation of the date, rate, quantity, and method of application of the nutrient, and/or form and source of manure, commercial fertilizer, and/or other organic by-products in the operating record and present the information to ODA upon inspection.
83. On or about August 14, 2006 and March 22, 2007, an ODA inspector discovered that the Defendants had failed to accurately record manure operating levels in the operating record.

84. On or about October 10, 2007, an ODA LEPP inspector discovered that the Defendants failed to collect and/or document the collection of groundwater samples for total coliform bacteria.

85. From approximately June 2007 through October 10, 2007, Defendants (1) failed to inspect and/or document the inspection of manure storage or treatment facilities for erosion, leakage, animal damage, and emerging vegetation; (2) failed to inspect and/or document inspections of manure operating levels at the manure storage pond 1, the manure storage pond 2, and the large stormwater pond; (3) failed to inspect, repair, and/or document inspections or repairs of the stormwater conveyances, diversion devices, runoff diversion structures, and devices channeling contaminated stormwater to the manure storage ponds; (4) failed to inspect and/or document inspections of the manure application equipment; (5) failed to inspect on a daily basis and/or document inspections of water lines; (6) failed to document the date, rate, quantity, and method of nutrient applications that had occurred from September 24, 2007 through October 5, 2007; and (7) failed to inspect and/or document regular inspections.

86. From approximately November 5, 2007 through April 10, 2008, Defendants (1) failed to inspect and/or accurately document inspections of manure operating levels including the amount of freeboard remaining and (2) failed to inspect on a daily basis and/or document inspections of water lines.

87. From approximately April 10, 2008 through November 14, 2008, Defendants (1) failed to inspect and/or accurately record manure operating levels; (2) failed to inspect and/or document the inspection of manure storage or treatment facilities for erosion, leakage, animal damage, and emerging vegetation; (3) failed to inspect on a daily basis and/or document inspections of water lines and/or water meters; and (4) failed to present the complete records to the ODA inspector.

88. From approximately October 30, 2009 through June 8, 2010, Defendants failed to collect and/or document the collection of soil samples and the date, rate, quantity, and method of nutrient applications and/or provide these records to ODA upon inspection.

89. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-13, Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-2-16, the terms and conditions of PTO No. VAN-0001.PO001.PUTN, and Ohio Adm. Code 901:10-1-10(G), for which Defendants are subject to injunctive relief pursuant to R.C. 903.16, and for which each Defendant is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

III. PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

- A. Issue an injunction permanently enjoining Defendant Van Ham Dairy, LLC and Defendant Jan Van Ham from violating R.C. Chapters 903, the rules adopted under that Chapter, any permits issued by ODA, and any Orders issued by the Director;
- B. Order each Defendant to pay a civil penalty of ten thousand dollars (\$10,000) for each day of each violation alleged in this Complaint, including each day of each violation subsequent to the filing of this action, pursuant to R.C. 903.16;
- C. Order Defendants to maintain properly installed and functioning manure level indicators within the interior of manure storage pond 1, manure storage pond 2, and the large stormwater pond as required;
- D. Order Defendants to pay all costs of this action, including extraordinary enforcement costs and attorney fees;

- E. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and
- F. Grant such relief as this Court may deem necessary and appropriate.

Respectfully submitted,

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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COMMON PLEAS COURT
TERESA J. LAWERS, CLERK
PUTNAM COUNTY, OHIO
2011 MAR -1 P 1:19

IN THE COURT OF COMMON PLEAS
PUTNAM COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE,
OHIO ATTORNEY GENERAL

Plaintiff,

v.

Van Ham Dairy, LLC, et al.,

Defendants.

Case No. 2011 CN47

Judge Randall Basinger

CONSENT ORDER

COMMON PLEAS COURT
TERESA J. LAMERS, CLERK
PUTNAM COUNTY, OHIO
2011 MAR -1 P 1:41

The Complaint in the above-captioned matter having been filed, and Plaintiff, State of Ohio, by its Attorney General Michael DeWine ("Plaintiff") and Defendants Van Ham Dairy, LLC and Jan Van Ham ("Defendants") having consented to the entry of this Order. Defendants do not admit the allegations set forth in the Plaintiff's Complaint and deny any violation of local, state, or federal statute, regulation or common law;

NOW, THEREFORE, without trial of any issue of fact or law, without admission of liability by Defendants and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this case pursuant to the Ohio Revised Code ("R.C.") Chapter 903. The Complaint states a claim upon which relief can be granted against the Defendants pursuant to R.C. Chapter 903. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, all current and subsequent owner(s) and/or operator(s) of the Van Ham Dairy, and all successors in interest to the owners or operators of the Van Ham Dairy, which is located at 7089 Road 22, Continental, Putnam County, Ohio 45831, and upon their officers, agents, servants, employees, successors, and assigns, and those persons in concert or privity with them.
3. Defendants and successors in interest of the Van Ham Dairy shall give at least thirty (30) days notice to the Ohio Department of Agriculture ("ODA") Livestock Environmental Permitting Program ("LEPP") before the sale or transfer of ownership of the facility.
4. Defendants shall provide a copy of this Consent Order to all successors in interest and/or any subsequent owner(s) and/or operator(s) of the Van Ham Dairy prior to the transfer of Defendants' ownership rights.
5. No change in ownership or status of Defendants, including but not limited to any transfer of assets or personal property, shall in any way alter Defendants' rights or obligations under Paragraphs 14 and 15 of this Consent Order.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. Plaintiff alleges in its Complaint that the Defendants have committed various violations of R.C. Chapter 903, Ohio Administrative Code Chapter 901:10, and permits and orders issued pursuant thereto. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims of violations alleged in the Complaint up to the date of the entry of this Consent Order.
7. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief from persons other than the Defendants for claims or conditions

alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to bring any legal or equitable action against any person other than Defendants. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief against the Defendants or any other appropriate persons for claims or conditions not alleged in the Complaint, including violations that arise, continue, or occur after the filing of the Complaint. Nothing in this Consent Order shall be construed to relieve the Defendants of their obligations to comply with applicable federal, state, or local statutes, rules, regulations, or ordinances. Further, nothing in this Consent Order shall be construed as to limit the authority of the Plaintiff to take any action against any person, including the Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to enforce this Consent Order through a contempt action or to otherwise seek relief pursuant to the terms of the Consent Order for violations of the Consent Order or other subsequent violations of law by the Defendants. This Consent Order in no way waives any defense afforded to Defendants by law in any contempt action brought by the Plaintiff. Finally, Defendants reserve all rights that they may have under Ohio's Rules of Civil Procedure.

IV. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

8. Performance of the terms of this Consent Order is not predicated on the receipt of any grant, loan or funds from the federal or state government or private financial institution. In addition, performance of the terms of this Consent Order is not excused by the failure to obtain, or shortfall of, any such grant, loan or funds, or by the processing of any applications for the same.

V. PERMANENT INJUNCTION

9. Defendants Van Ham Dairy, LLC and Jan Van Ham are hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 903, the rules adopted under those laws, and the terms and conditions of permits issued by the Director of the ODA. All future permits, renewals, modifications or changes to any permit(s) issued to any Defendant by the Director of the ODA and/or effective after the entry of this Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

VI. SPECIFIC INJUNCTIVE RELIEF

10. Defendants are enjoined to maintain properly installed and functioning manure level indicators within the interior of manure storage pond 1, manure storage pond 2, and the stormwater pond at the Van Ham Dairy to monitor manure levels.

11. Defendants are enjoined to visually inspect the manure level indicators to be placed at the Van Ham Dairy a minimum of once a week, and to record the operating level and the amount of freeboard or storage remaining in the manure storage or treatment structures as reflected on the manure level indicators. Defendants are enjoined to maintain the operating levels set forth in the permits and any permits subsequently issued by ODA and Defendants are enjoined to maintain a freeboard level in each of the manure storage or treatment facilities of at least one foot plus the volume necessary to contain a 100-year, 24-hour rainfall event and any runoff collected by the manure storage or treatment facility, or of at least the minimum required by their Permit to Operate ("PTO"), whichever freeboard level is greater.

12. Defendants are enjoined to immediately submit an application for renewal of the PTO issued to Van Ham Dairy, LLC on November 26, 2003 by the Director of ODA, and to obtain a renewal PTO from ODA.

VII. SUBMITTAL OF DOCUMENTS, NOTICES, AND SUBMITTAL REVIEW

13. All documents required to be submitted and/or notices required to be given to the ODA Livestock Environmental Permitting Program under this Consent Order shall be submitted to:

Ohio Department of Agriculture
Livestock Environmental Permitting Program
Attention: Kevin Elder (or his successor)
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

VIII. CIVIL PENALTY

14. Defendants are ordered to pay to the State of Ohio the total amount of \$40,000. Unless otherwise agreed by the parties, payments shall be made in eleven consecutive quarterly installments of \$3,333.00, with one additional, final quarterly installment of \$3,337.00. The first quarterly installment shall be due on or before March 31, 2011, and each subsequent installment shall be due on the last business day of each of the next eleven calendar quarters. All payments shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," delivered by mail or otherwise, to Karen Pierson, Paralegal, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. Notwithstanding the Defendants joint and several liability, the State agrees to not seek payment from Defendant Jan Van Ham, unless Defendant Van Ham Dairy, LLC fails to make timely payment.

15. In the event that Defendant Van Ham Dairy, LLC fails to timely make the payments as set forth in Paragraph 14, any remaining balance of the total civil penalty shall then become immediately payable to the State in its entirety. Notwithstanding the Defendants joint and several liability, the State agrees to not seek payment from Defendant Jan Van Ham, unless Defendant Van Ham Dairy, LLC fails to make timely payment.

IX. STIPULATED PENALTIES

16. Except for those requirements previously addressed in Paragraphs 14 and 15 above, in the event that any Defendant fails to meet any requirement of the terms and conditions of this Consent Order set forth in Paragraphs 9 through 12 above, or the terms and conditions of permits issued by the Director of the ODA, Defendants shall be liable for, and Defendant Van Ham Dairy, LLC shall immediately and automatically pay a stipulated penalty according to the following payment schedule:

- (a) For each day of failure to meet a specified deadline or requirement, up to sixty (60) days, one hundred dollars (\$100) per day for each deadline missed or requirement not met;
- (b) For each day of failure to meet a specified deadline or requirement, from sixty-one (61) days to one hundred and twenty (120) days, three hundred dollars (\$300) per day for each deadline missed or requirement not met;
- (c) For each day of failure to meet a specified deadline or requirement, from one hundred twenty one (121) days to one hundred eighty (180) days, six hundred dollars (\$600) per day for each deadline missed or requirement not met;
- (d) For each day of failure to meet a specified deadline or requirement, from one hundred eighty-one (181) days and over, eight hundred dollars (\$800) per day for each deadline missed or requirement not met.

The State agrees to not seek payment from Defendant Jan Van Ham, unless Defendant Van Ham Dairy, LLC fails to make timely payment.

17. Any payment of stipulated penalties required to be made under this Section of the Consent Order shall be made by delivering by mail or otherwise, a certified check for the

appropriate amount made payable to the order of "Treasurer, State of Ohio" to Karen Pierson, Paralegal, or her successor, at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 within thirty (30) days from the date of the failure to comply with this Consent Order. Defendants shall also state in writing the specific provision of the Consent Order that was not complied with and the dates of non-compliance. Payment of stipulated penalties and acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Section of the Consent Order shall not be construed to limit Plaintiff's authority to seek additional relief for the violations giving rise to the stipulated penalties pursuant to R.C. Chapter 903, or to otherwise seek judicial enforcement of this Consent Order.

X. RETENTION OF JURISDICTION

18. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

XI. COURT COSTS

19. Defendants are ordered to pay the court costs of this action.

XII. MODIFICATION

20. No modification shall be made to this Consent Order without the written agreement of the parties and the Court.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

21. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon the parties

notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIV. SIGNATORIES

22. Each of the undersigned representatives for the parties represent that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

IT IS SO ORDERED.

3-1-11
DATE

Randall Basinger "signed"

JUDGE, COURT OF COMMON PLEAS
PUTNAM COUNTY

APPROVED:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

Aaron S. Farmer

By: Aaron S. Farmer (0080251)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Aaron.Farmer@OhioAttorneyGeneral.gov
Counsel for the Plaintiff

VAN HAM DAIRY, LLC

Jan Van Ham
By: Jan Van Ham
Title: Member of and Operator for
Defendant

COMMON PLEAS COURT
TERESA J. LAWRENCE, CLERK
PUTNAM COUNTY, OHIO

2011 MAR -1 P 1:41

JAN VAN HAM

Jan Van Ham
Defendant


Robert J. Karl (0042292)

R. Benjamin Franz (0080693)

Ulmer & Berne, LLP

88 E. Broad St.

Suite 1600

Columbus, Ohio 43215

Telephone: (614) 229-0010

Counsel for Defendants, Van Ham Dairy,
LLC and Jan Van Ham

COMMON PLEAS COURT
TERESA J. LAWERS, CLERK
PUTNAM COUNTY, OHIO
2011 MAR -1 P 1:41

**Before the Ohio Department of Agriculture
State of Ohio**

In the matter of:

Van Ham Dairy
22177 Road C
Continental, Ohio 45861

Joint Stipulation and Settlement Agreement

Van Ham Dairy and the Staff of Ohio Department of Agriculture ("Staff" or "ODA"), having mutually agreed to modify the previous order issued on October 17, 2007 by the Director of the ODA ("Director"), jointly stipulate and agree as follows:

Stipulation of Facts

1. At all times relevant to this agreement, Van Ham Dairy is a Concentrated Animal Feeding Facility ("CAFF") as defined in Ohio Revised Code ("R.C.") 903.01(E).
2. All CAFFs are governed by the best management practice rules promulgated under Ohio Revised Code Chapter 903. R.C. 903.10(C).
3. Jan Van Ham and Anja Van Ham operate Van Ham Dairy, located at 7089 Road 22, Continental, Ohio 45861 ("Van Ham Dairy Property"). Jan Van Ham and Anja Van Ham are authorized to sign for Van Ham Dairy.
4. Jan Van Ham and Anja Van Ham, on behalf of Van Ham Dairy, signed a Joint Stipulation and Settlement Agreement with the ODA negating the need for an administrative hearing arising from the Director's October 30, 2006 Notice of Adjudication Hearing.

5. Director's Order 2007-412 was issued and journalized on October 17, 2007 ("Director's Order 2007-412").
6. Paragraph 5 of Director's Order 2007-412 ordered Van Ham Dairy to install five water meters within 90 days after Director's Order 2007-412 was journalized (January 15, 2008) to measure the water flow at the dairy facility. The water meters were ordered to be installed in locations to monitor:
 - a. total dairy well use;
 - b. the plate cooler;
 - c. cattle drinking water;
 - d. misters for cattle cooling; and
 - e. parlor cleaning water.
7. Paragraph 6 of Director's Order 2007-412 ordered Van Ham Dairy to install five permanent tile stops on fields that are used for land application of manure, the locations of which were ordered to be provided to the ODA for ODA's review and approval within 30 days after Director's Order 2007-412 was journalized (November 16, 2007). The locations for the five permanent tile stops were to be approved by the ODA before installation. Van Ham Dairy was ordered to install these permanent tile stops 120 days after the ODA approved of their locations.
8. Construction time constraints have prevented Van Ham Dairy from installing the five water meters in the time ordered by Paragraph 5 of Director's Order 2007-412. Van Ham Dairy has requested an extension of time to install the five water meters and the Staff has agreed that Van Ham Dairy's request for an extension of time is reasonable. The Staff has agreed to a new Director's Order modifying the deadline for Van Ham Dairy's installation of the five water meters as set forth in Paragraph 5 of Director's Order 2007-412.

9. Van Ham Dairy has identified and submitted five tile outlet locations to the ODA for ODA's approval for the installation of permanent tile stops as ordered by Paragraph 6 of Director's Order 2007-412. Van Ham Dairy has proposed to connect two of the five identified tile outlets into one tile outlet. The proposed connection of two of the five tile outlets into one tile outlet will reduce the need for the installation of five permanent tile stops to four permanent tile stops. The Staff has agreed that Van Ham Dairy's proposal to connect the two of the five identified tile outlets into one tile outlet and to install four permanent tile stops instead of five permanent tile stops is reasonable. The Staff has agreed to a new Director's Order modifying the number of permanent tile stops Van Ham Dairy was ordered to install in Paragraph 6 of Director's Order 2007-412 from five permanent tile stops to four permanent tile stops.

WHEREAS, Van Ham Dairy and the Staff desire to modify Paragraph 5 and Paragraph 6 of Director's Order 2007-412 and in accordance with the terms of this Joint Stipulation and Settlement Agreement, the parties agree as follows:

Settlement Agreement

1. The parties request that the Director accept, sign and issue an Order identical in substance to the proposed Order in Attachment A.
2. If the Director signs an Order identical in substance to the proposed Order in Attachment A, Van Ham Dairy waives any right to appeal the Order to the Environmental Review Appeals Commission and/or any tribunal, panel, board, or court of competent jurisdiction, and any right to contest the lawfulness or reasonableness of the Order.
3. Notwithstanding the proceeding, ODA and Van Ham Dairy agree that if an Order identical in substance to the proposed Order in Attachment A is appealed by any other party to the Environmental Review Appeals Commission or any tribunal, panel, board, or court of

competent jurisdiction, Van Ham Dairy retains the right to intervene and participate in such an appeal. In such an event, Van Ham Dairy shall continue to comply with this Joint Stipulation and Settlement Agreement and the Order notwithstanding such an appeal and intervention unless the Agreement or Order is stayed, vacated or modified.

4. If the Director signs and issues an Order identical in substance to the proposed Order in Attachment A, Van Ham Dairy agrees to install five water meters by April 15, 2008 to measure water flow at the dairy. Van Ham Dairy agrees to install the water meters in locations to monitor:

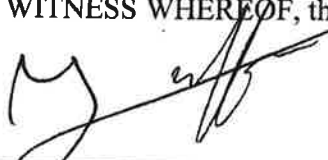
- a. total dairy well use;
- b. the plate cooler;
- c. cattle drinking water;
- d. misters for cattle cooling; and
- e. parlor cleaning water.

5. If the Director signs and issues an Order identical in substance to the proposed Order in Attachment A, Van Ham Dairy agrees to connect two of the five identified tile outlets submitted to the ODA into one tile outlet, reducing the number of tile outlets from five to four and the need to install five permanent tile stops to four permanent tile stops. Van Ham Dairy agrees that the locations for the four permanent tile stops shall be approved by the ODA before installation. Van Ham Dairy agrees to install the four permanent tile stops within 120 days of the ODA's approval of the locations for the permanent tile stops.

6. Van Ham Dairy agrees that the terms and conditions of Director's Order 2007-412, as modified by an Order identical in substance to the proposed Order in Attachment A, shall continue to apply to and be binding upon Van Ham Dairy, all subsequent owner(s) and/or

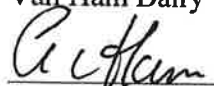
operator(s), and all subsequent owner(s) and/or subsequent successors in interest to the Van Ham Property.

IN WITNESS WHEREOF, the following signatures are binding upon the parties.

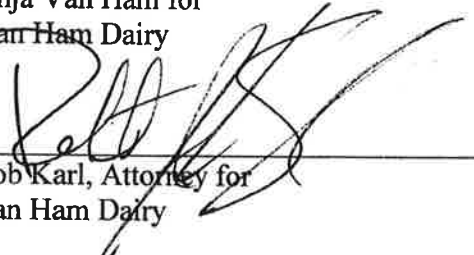


Jan Van Ham for
Van Ham Dairy

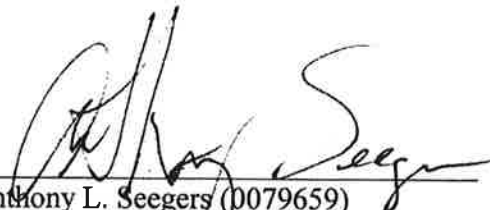
Marc Dann
Attorney General



Anja Van Ham for
Van Ham Dairy



Bob Karl, Attorney for
Van Ham Dairy



Anthony L. Seegers (0079659)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766
Attorney for the Director of the Ohio
Department of Agriculture

Attachment A

**Before the Ohio Department of Agriculture
State of Ohio**

In the matter of:

Van Ham Dairy
22177 Road C
Continental, Ohio 45861

ORDER

The parties have agreed to modify Paragraph 5 and Paragraph 6 of Director's Order 2007-412.

FINDINGS

1. Van Ham Dairy is a Concentrated Animal Feeding Facility ("CAFF") as defined in Ohio Revised Code ("R.C.") 903.01(E).
2. All CAFFs are governed by the best management practice rules promulgated under Ohio Revised Code Chapter 903. R.C. 903.10(C).
3. Jan Van Ham and Anja Van Ham operate Van Ham Dairy, located at 7089 Road 22, Continental, Ohio 45861 ("Van Ham Dairy Property").
4. Jan Van Ham and Anja Van Ham, on behalf of Van Ham Dairy, signed a Joint Stipulation and Settlement Agreement with the Ohio Department of Agriculture ("ODA") negating the need for an administrative hearing arising from the Director's October 30, 2006 Notice of Adjudication Hearing.
5. Director's Order 2007-412 was issued and journalized on October 17, 2007 ("Director's Order 2007-412").

6. Paragraph 5 of Director's Order 2007-412 ordered Van Ham Dairy to install five water meters to measure the water flow at the dairy facility within 90 days after Director's Order 2007-412 was journalized (January 15, 2008). The water meters were ordered to be installed in locations to monitor:

- a. total dairy well use;
- b. the plate cooler;
- c. cattle drinking water;
- d. misters for cattle cooling; and
- e. parlor cleaning water.

7. Paragraph 6 of Director's Order 2007-412 ordered Van Ham Dairy to install five permanent tile stops on fields that are used for land application of manure, the locations of which were ordered to be provided to the ODA for ODA's review and approval within 30 days after Director's Order 2007-412 was journalized (November 16, 2007). The locations for the five permanent tile stops were to be approved by the ODA before installation. Van Ham Dairy was ordered to install these permanent tile stops 120 days after the ODA approved the locations for their installation.

8. Due to construction time constraints, Van Ham Dairy is unable to install the five water meters in the time ordered by Paragraph 5 of Director's Order 2007-412. Van Ham Dairy has requested an extension of time to install the five water meters. The Staff of the ODA has agreed to Van Ham Dairy's request for an extension of time and to a new Director's Order modifying Paragraph 5 of Director's Order 2007-412 to grant such an extension. Van Ham Dairy has agreed to install the five water meters by April 15, 2008 to measure water flow at the dairy. Van Ham Dairy has agreed to install the water meters in locations to monitor:

- a. total dairy well use;
- b. the plate cooler;
- c. cattle drinking water;
- d. misters for cattle cooling; and
- e. parlor cleaning water.

9. Van Ham Dairy has identified and submitted five tile outlet locations to the ODA for fields that are used for land application of manure for ODA's approval for the installation of permanent tile stops. Van Ham Dairy has proposed to connect two of the five identified outlets submitted to the ODA into one tile outlet, reducing the number of tile outlets from five to four and the need to install five permanent tile stops to four permanent tile stops. The Staff has agreed to Van Ham Dairy's proposal to connect two of the five identified tile outlets into one tile outlet and to install four permanent tile stops instead of five permanent tile stops. The Staff has agreed to a new Director's Order modifying Paragraph 6 of Director's Order 2007-412 to reduce the number of permanent tile stops ordered to be installed from five to four.

Based on the above findings, it is hereby:

ORDERED

1. The terms of Director's Order 2007-412, issued and journalized on October 17, 2007, continue in effect except that Paragraphs 5 and 6 of Director's Order 2007-412 are specifically modified and superseded by Paragraphs 2 and 3 of this Order, as set forth below.

2. Van Ham Dairy shall install five water meters by April 15, 2008 to measure the water flow at the dairy facility. The water meters shall be installed in locations to monitor:

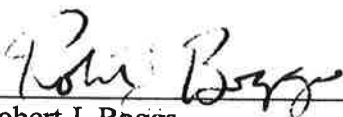
- a. total dairy well use;
- b. the plate cooler;

- c. cattle drinking water;
- d. misters for cattle cooling; and
- e. parlor cleaning water.

3. Van Ham Dairy shall connect two of the five identified tile outlets submitted to the ODA into one tile outlet, reducing the number of tile outlets from five to four and the need for the installation of five permanent tile stops to four permanent tile stops. Van Ham Dairy shall install four permanent tile stops on fields that are used for land application of manure. The locations for the four permanent tile stops shall be approved by the ODA before installation. Van Ham Dairy shall install these four permanent tile stops within 120 days of ODA's approval of the locations for the permanent tile stops.
4. This Order shall apply to and be binding upon Van Ham Dairy, all subsequent owner(s) and/or operator(s), and all subsequent owner(s) and/or subsequent successor(s) in interest to the Van Ham Dairy Property.
5. The provisions in this Order shall terminate upon renewal of the Permit to Operate.
6. That, upon journalization, a certified copy of this Order be sent to Van Ham Dairy.

Effective date of this Order: Upon Journalization.

Robert J. Boggs, Director
Ohio Department of Agriculture


Robert J. Boggs

Entered, Ohio Department of Agriculture Journal this 27th day of February
2008, by Craig Ellis

CLERK OF COMMON PLEAS CT.
LICKING COUNTY, OHIO
GARY R. WALTERS, CLERK
IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

2011 APR -6 AM 10:44

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Plaintiff,

v.

OHIO FRESH EGGS, LLC
11212 Croton Road
Croton, Ohio 43013

Defendant.

11CV0480

Case No. FILED

Judge

"Other Case" Designation

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

The ownership and operation of twelve (12) commercial egg production facilities in Ohio by Defendant Ohio Fresh Eggs, LLC ("Defendant OFE") requires strict environmental and operational controls. The Ohio Department of Agriculture ("ODA") has issued permits to Defendant OFE to ensure environmental compliance. The Ohio Environmental Protection Agency ("Ohio EPA") has issued orders to Defendant OFE for the company's past failure to comply with provisions of the Ohio Revised Code ("R.C.") and the Ohio Administrative Code ("Ohio Adm. Code").

Defendant OFE, through its twelve (12) commercial egg production facilities, has failed to comply with numerous provisions of the permits from ODA, the orders issued by Ohio EPA, and statutes and rules, all of which require strict compliance to ensure environmental protection. Therefore, Plaintiff, the State of Ohio ("Plaintiff" or "State of Ohio"), by and through its Attorney General, Michael DeWine, and at the written request

of the Director of ODA ("ODA Director") and the Director of Ohio EPA ("Ohio EPA Director"), hereby institutes this action against Defendant OFE to enforce Ohio's concentrated animal feeding facility laws set forth in R.C. Chapter 903, Ohio's public drinking water system laws set forth in R.C. Chapter 6109, Ohio's water pollution laws set forth in R.C. Chapter 6111, and the rules promulgated under those statutes.

Pursuant to Ohio Civil Rule of Procedure ("Civ. R.") 8(A), this Complaint seeks relief in excess of twenty-five thousand dollars (\$25,000).

I. GENERAL ALLEGATIONS

1. Defendant OFE is a limited liability company organized under the laws of the Commonwealth of Pennsylvania. Defendant OFE is authorized to transact business in the State of Ohio as a registered Foreign Limited Liability Company under the laws of the State of Ohio. At all times relevant to this Complaint, Defendant OFE maintained a principal place of business at 11212 Croton Road, Croton, Licking County, Ohio 43013. Defendant OFE's current mailing address is P.O. Box 247, Croton, Licking County, Ohio 43013. At all times relevant to this Complaint, Defendant OFE operated facilities in Licking County in the vicinity of Croton, Ohio; in Hardin County in the vicinities of Goshen Township and Mount Victory, Ohio; and in Wyandot County in the vicinity of Marseilles, Ohio.
2. Defendant OFE is a proper party to be named in this Complaint. Defendant OFE, during all relevant times to this Complaint, is a "person," as that term is defined in R.C. 1.59, R.C. 903.01, R.C. 6109.01, and R.C. 6111.01.

3. The ODA Livestock Environmental Permitting Program ("LEPP") administers the Concentrated Animal Feeding Facility ("CAFF") program established in R.C. Chapter 903 and the rules promulgated thereunder in Ohio Adm. Code Chapter 901:10.
4. Defendant OFE owns and/or operates multiple commercial layer, commercial pullet, and breeding and production complexes in Hartford, Monroe, and Bennington Townships in Licking County, Ohio. These facilities, which include four (4) commercial pullet complexes, four (4) commercial layer complexes, a hatchery, breeder layer, breeder pullet facilities, and the necessary support structures for the production of eggs and handling of those eggs and generate waste, waste water, storm water, and manure associated with production and handling of the eggs, are collectively referenced hereafter as the "Croton Facilities."
5. Croton Layer 1 is located at 11995 Croton Road, Croton, Ohio 43013. Croton Layer 1 uses a belt-battery system that transports manure by belts to a separate manure storage barn for storage, a stormwater pond, and two egg wash lagoons. Croton Layer 1 is a major concentrated animal feeding facility ("MCAFF"), as that term is defined in R.C. 903.01.
6. Croton Layer 2 is located at 9300 Croton Road, Johnstown, Ohio 43031. Croton Layer 2 has high-rise barns to store manure under the bird cages, a stormwater pond, and two egg wash lagoons, but Croton Layer 2 does not have a separate manure storage barn. Croton Layer 2 is a MCAFF, as that term is defined in R.C. 903.01.
7. Croton Layer 3 is located at 11652 Clover Valley Road, Croton, Ohio 43013. Croton Layer 3 has high-rise barns to store manure under the bird cages, a stormwater pond, and

- two egg wash lagoons. Croton Layer 3 is a MCAFF, as that term is defined in R.C. 903.01.
8. Croton Layer 4 is located at 11492 Westley Chapel Road, Croton, Ohio 43013. Croton Layer 4 uses a belt-battery system that transports manure by belts to a separate manure storage barn for storage, a stormwater pond, and two egg wash lagoons. Croton Layer 4 is a MCAFF, as that term is defined in R.C. 903.01.
9. Croton Pullet 1 is located at 9550 Parsons Road, Croton, Ohio 43013. Croton Pullet 1 uses a belt-battery system that transports manure by belts to a separate manure storage barn for storage and a stormwater pond, but Croton Pullet 1 does not have an egg wash lagoon. Croton Pullet 1 is a CAFF, as that term is defined in R.C. 903.01.
10. Croton Pullet 2 is located at 12280 Croton Road, Croton, Ohio 43013. Croton Pullet 2 uses a belt-battery system that transports manure by belts to a separate manure storage barn for storage and a stormwater pond, but Croton Pullet 2 does not have an egg wash lagoon. Croton Pullet 2 is a CAFF, as that term is defined in R.C. 903.01.
11. Croton Pullet 3 is located at 9559 Jacob White Road, Johnstown, Ohio 43031. Croton Pullet 3 has high-rise barns to store manure under the bird cages, and a stormwater pond. Croton Pullet 3 does not currently have a separate manure storage barn. Croton Pullet 3 is a CAFF, as that term is defined in R.C. 903.01.
12. Croton Pullet 4 is located at 10127 Benner Road, Croton, Ohio 43013. Croton Pullet 4 has high-rise barns to store manure under the bird cages and a stormwater pond. Croton Pullet 4 does not have a separate manure storage barn or an egg wash lagoon. Croton Pullet 4 is a CAFF, as that term is defined in R.C. 903.01.

13. Croton Hatchery/Breeder Pullet is located at 10214 Crouse Willison Road, Johnstown, Ohio 43031 (the hatchery) and 8251 Benner Road, Johnstown, Ohio 43031 (the breeder pullet facility). The breeder section of the facility has double-deck barns to store manure on two separate floors of each double-deck barn, but the breeder section does not have a separate manure storage barn, a stormwater pond, or an egg wash lagoon. The hatchery section of the facility has high-rise barns to store manure under the bird cages, a stormwater pond, and a wastewater pond, but the hatchery section of the facility does not have a separate manure storage barn. Croton Hatchery/Breeder Pullet is a CAFF, as that term is defined in R.C. 903.01.

14. Defendant OFE also owns and/or operates a commercial layer facility located in Marseilles Township, Wyandot County, approximately two (2) miles southeast of Marseilles, Ohio on Township Road 103. This facility which includes the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure storage associated with production and handling of the eggs will be referenced hereafter as the "Marseilles Layer Farm" or "Marseilles facility. The barns at Marseilles Layer 6 are high-rise barns that store manure under the bird cages. Marseilles Layer 6 also includes a stormwater pond, and two egg wash lagoons, but Marseilles Layer 6 does not have a separate manure storage barn. Marseilles Layer 6 is a MCAFF, as that term is defined in R.C. 903.01.

15. Defendant OFE owns and/or operates a commercial layer facility located in Hale Township, Hardin County, approximately two (2) miles east of Mt. Victory, Ohio on County Road 245. This facility and the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure

storage associated with production and handling of the eggs will be referenced hereafter as the "Mt. Victory Layer Farm" or "Mt. Victory facility." The barns at Mount Victory Layer 5 are high-rise barns that store manure under the bird cages. Mount Victory Layer 5 also includes a stormwater pond, and two egg wash lagoons, but Mount Victory Layer 5 does not have a separate manure storage barn. Mount Victory Layer 5 is a MCAFF, as that term is defined in R.C. 903.01.

16. Defendant OFE owns and/or operates a commercial pullet facility located in Dudley Township, Hardin County, on County Road 256 approximately two (2) miles to the northeast of Hepburn, Ohio. This commercial pullet facility and the necessary support structures for handling of the waste, wastewater, stormwater, and manure storage associated with the facility will be referred to collectively as the "Goshen Pullet Farm #5" or "Goshen facility." The barns at Goshen Pullet 5 are high-rise barns that store manure under the bird cages. Goshen Pullet 5 also includes a stormwater pond. Goshen Pullet 5 does not have a separate manure storage barn or an egg wash lagoon. Goshen Pullet 5 is a MCAFF, as that term is defined in R.C. 903.01.

17. The Mt. Victory facility, the Marseilles facility and the Goshen facility collectively are hereafter referred to as "the Northwest Facilities."

18. Ohio Revised Code 903.02 requires anyone installing a new or modifying an existing CAFF in Ohio to obtain a Permit to Install ("PTI") from ODA LEPP. On December 23, 2003, Defendant OFE was issued PTI No. OFL1-0001.PI001.LICK for Croton Layer 1, PTI No. OFL2-0001.PI001.LICK for Croton Layer 2, PTI No. OFL3-0001.PI001.LICK for Croton Layer 3, and PTI No. OFL4-0001.PI001.LICK for Croton Layer 4. Defendant

OFE is listed on each of the four aforementioned PTIs as the "owner/operator," as that term is defined in Ohio Adm. Code 901:10-1-01.

19. For the purposes of this Complaint, all of the requirements that apply to a CAFF also apply to a MCAFF, but not all of the requirements that apply to a MCAFF apply to a CAFF.

20. Ohio Revised Code 903.03 requires anyone operating a CAFF in Ohio to obtain a Permit to Operate ("PTO") from ODA LEPP. On December 23, 2003, Defendant OFE was issued PTO No. OFHB-0001.PO001.LICK for the Croton Hatchery/Breeder Pullet, PTO No. OFL1-0001.PO001.LICK for Croton Layer 1, PTO No. OFL2-0001.PO001.LICK for Croton Layer 2, PTO No. OFL3-0001.PO001.LICK for Croton Layer 3, PTO No. OFL4-0001.PO001.LICK for Croton Layer 4, PTO No. OFP1-0001.PO001.LICK for Croton Pullet 1, PTO No. OFP2-0001.PO001.LICK for Croton Pullet 2, PTO No. OFP3-0001.PO001.LICK for Croton Pullet 3, and PTO No. OFP4-0001.PO001.LICK for Croton Pullet 4. On February 2, 2004, Defendant OFE was issued PTO No. OFGO-0001.PO001.HARD for Goshen Pullet 5, PTO No. OFMT-0001.PO001.HARD for Mount Victory Layer 5, and PTO No. OFMA-0001.PO001.WYAN for Marseilles Layer 6. Defendant OFE is listed on each of the twelve (12) aforementioned PTOs as the "owner/operator," as that term is defined in Ohio Adm. Code 901:10-1-01.

21. Ohio Revised Code 903.03, 903.06, and Ohio Adm. Code 901:10-2-19 require an application for a PTO to contain an Insect and Rodent Control Plan designed to minimize the presence and negative effects of insects and rodents at the CAFF and in surrounding

areas, including land on which manure is stored or applied. The insect and rodent control plan shall conform to best management practices established in the rules.

22. Ohio Revised Code 903.06 provides that the owner or operator of a CAFF shall not violate the CAFF's Insect and Rodent Control Plan.

23. Defendant OFE's PTOs each contain an Insect and Rodent Control Plan that satisfies the requirements of Ohio Adm. Code 901:10-2-19. All of Defendant OFE's PTOs have Insect and Rodent Control Plans with requirements for the daily inspections, weekly inspections, bi-weekly inspections, and recordkeeping for the facilities. The Insect and Rodent Control Plans also set forth the requirements for manure moisture levels, recordkeeping for manure moisture levels, and maintaining the appropriate dryness of the manure including the optimum effectiveness of pit fans in the barns, the prohibition against the presence of manure-laden water inside the barns, operating the belts in the barns at least once every day, and maintaining appropriate barn ventilation.

24. The Insect and Rodent Control Plans require an owner or operator to establish a satisfactory plan to follow for the maintenance of the barns in order to prevent the presence of insects and/or rodents.

25. The Insect and Rodent Control Plans require Defendant OFE to take actions to prevent the abundant and/or extreme presence of flies and/or larvae in the barns.

26. The Insect and Rodent Control Plans require Defendant OFE to place bait stations on the outside perimeter of each barn and be maintained on a weekly basis.

27. The Insect and Rodent Control Plans require the daily inspection of the manure pit for water leaks, the immediate repair of any water leaks, and the documentation of the inspections and repairs.

28. The Insect and Rodent Control Plans require Defendant OFE to treat all manure with an appropriate insecticide prior to the removal of the manure from the barns.
29. The Insect and Rodent Control Plans require Defendant OFE to stockpile manure removed from the barns for two weeks or more prior to land application if the manure removed from the barns has moderate, abundant, and/or extreme insect activity.
30. The Insect and Rodent Control Plans require that if manure is removed from the barns and is stockpiled and has moderate to abundant insect populations, Defendant OFE must monitor the stockpiles every other day for beetle and fly activity until the activity has subsided.
31. The Insect and Rodent Control Plans require Defendant OFE to review land application records and monitor land application activities to ensure that land application contractors are properly applying insecticide to the manure before and during land application and delaying land application if stockpiled manure has moderate to abundant insect activity even after short-term residual insecticide is applied to the manure.
32. The Insect and Rodent Control Plans also require Defendant OFE to apply insecticide as necessary to reduce insect populations sufficiently to "few" in number for imminent land application activities. Defendant OFE is also required to monitor manure stockpiles during and after land application of manure for pest activity. Defendant OFE shall not land apply the stockpiled manure until insect activity has subsided or unless an insecticide may be applied with the manure as the manure is land applied.
33. The Insect and Rodent Control Plans require the submission of manure moisture sampling data to ODA on a quarterly basis during inspection.

34. The Insect and Rodent Control Plans require that complete vegetation control be maintained within a three foot perimeter of all buildings by measures such as gravel, mulch, or chemical control, and that vegetation height must be kept at six inches or less between the buildings and throughout the facility grounds.
35. The Insect and Rodent Control Plans require the Site Production Manager to perform two actions within twenty-four hours including using granular bait, space insect spraying, insect spraying pit walls, insect spraying manure directly, or spraying fungus if the speck cards reveal a level greater than 74, and perform one action within twenty-four hours if the speck cards reveal a level between 50 and 74.
36. The Insect and Rodent Control Plans for the Northwest Facilities require Defendant OFE to note on a daily basis any malfunctioning fans, missing louvers or other damage, as well as dirt accumulation that may interfere with proper operation, and to report these findings to the Site Production Manager and record the findings on an inspection form.
37. The Insect and Rodent Control Plans for the Northwest Facilities require that a qualified entomologist must inspect the barns, evaluate the environmental conditions and adult and larval fly populations, and make recommendations for possible control methods on a monthly basis. A monthly report outlining the evaluation and recommendations must be submitted to the Compliance Department Manager and the Director of Operations.
38. The Insect and Rodent Control Plan in PTO No. OFMA-0001.PO001.WYAN requires manure to be removed from each barn twice per year, and that rows 1 and 3 of manure in each barn must be removed in each spring, while rows 2 and 4 of manure in each barn must be removed during the middle to late summer through autumn.

39. Ohio Revised Code 903.03 and Ohio Adm. Code 901:10-2-07 requires an application for a PTO to contain a manure management plan, as that term is defined in Ohio Adm. Code 901:10-1-01. A manure management plan is a plan developed to minimize water pollution and protect waters of the state. The manure management plans shall include best management practices for the reuse and the recycling of nutrients, prevent direct contact of confined animals with waters of the state, and ensure proper mortality management. A manure management plan must be developed and implemented to comply with the best management practices set forth in Ohio Adm. Code 901:10-2-08 to 901:10-2-11; 901:10-2-13 to 901:10-2-16; and 901:10-2-18.
40. Ohio Adm. Code 901:10-2-08 sets forth the inspection, maintenance and monitoring requirements of a manure management plan.
41. Ohio Adm. Code 901:10-2-14 sets forth the requirements of a manure management plan for the land application of manure on land application areas.
42. Ohio Adm. Code 901:10-2-06 sets forth the design and maintenance requirements for manure storage or manure treatment facilities.
43. Ohio Adm. Code 901:10-2-08 sets forth the items that are to be inspected, performed, monitored, or maintained at a manure storage or treatment facility, and documented in the operating record.
44. Ohio Adm. Code 901:10-2-08 requires that the maximum operating level of a manure storage or treatment facility shall not exceed that specified in the manure management plan of each PTO.

45. Ohio Adm. Code 901:10-2-08 requires inspections of manure storage or treatment facilities for evidence of erosion, leakage, animal damage, cracking, excessive vegetation, or discharge.
46. Ohio Adm. Code 901:10-2-08 requires an owner or operator to ensure that any emerging vegetation such as trees, shrubs, and other woody species shall not be allowed to grow on the pond or lagoon dikes or side slopes.
47. Ohio Adm. Code 901:10-2-08 requires an owner or operator to perform annual ground water sampling at the facility and document the results in the operating record.
48. Ohio Adm. Code 901:10-2-06 requires an owner or operator to install a depth marker or other appropriate device in the interior of the manure storage pond or manure treatment lagoon to monitor manure levels if a depth marker or other appropriate device has not already been installed.
49. Ohio Adm. Code 901:10-2-08 sets forth that each manure storage or treatment facility must have a depth marker or other appropriate device which clearly indicates the minimum capacity necessary to contain a runoff and direct precipitation event and the section also requires equipment calibration and documentation of the calibration and maintenance.
50. Ohio Adm. Code 901:10-2-13 requires a manure management plan to contain information on the soil of the land application areas, and sets forth required procedures for soil sampling and analysis.
51. Ohio Adm. Code 901:10-2-13 requires that soil samples must be representative of a land application site with one composite soil sample representing no more than 25 acres or one composite soil sample for each land application site, whichever is less.

52. Ohio Adm. Code 901:10-2-05 provides that the minimum storage period for a fabricated structure shall be one hundred twenty days, unless otherwise approved by the department, and that ODA may require additional storage in order to ensure protection of groundwater, surface water, or the structural integrity of the fabricated structure.

53. Ohio Adm. Code 901:10-2-10 requires that manure from each manure storage or treatment facility shall be analyzed annually for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, and percent total solids.

54. Ohio Adm. Code 901:10-2-11 sets forth the requirements for an owner or operator electing to use distribution and utilization as a method for manure utilization.

55. Each and every PTO issued by ODA to Defendant OFE contains a manure management plan that satisfies and provides for the requirements of Ohio Adm. Code 901:10-2-04, Ohio Adm. Code 901:10-2-05, Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-10, Ohio Adm. Code 901:10-2-11, Ohio Adm. Code 901:10-2-13, and Ohio Adm. Code 901:10-2-14.

56. Ohio Adm. Code 901:10-2-16 requires the owner and or operator of a CAFF to maintain an operating record as part of a PTO. It also sets forth the items required to be documented in the operating record, including but not limited to records required by Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-14, and Ohio Adm. Code 901:10-2-19, such as the documentation of the distribution and utilization of manure, the documentation of actual crop yields, the documentation of groundwater samples, the documentation of manure nutrient analyses for each manure storage or treatment facility, and the documentation of the circumstances and conditions applicable to manure

application including land conditions, soil conditions, tile drainage, weather conditions, equipment maintenance, and manure application rates.

57. Ohio Adm. Code 901:10-2-07 requires an application for a PTO to contain an emergency response plan in accordance with Ohio Adm. Code 901:10-2-17. Ohio Adm. Code 901:10-2-17 sets forth the requirements to be contained in an emergency response plan.

58. Ohio Adm. Code 901:10-2-17 requires an owner or operator to notify ODA of discharges, the approximate amount and characteristics of the discharge, the waters of the state affected by the discharge, the circumstances which created the discharge, the steps being taken to clean up the discharge, and the persons with knowledge of and responsibility for the cleanup of the discharge as soon as possible but in no case more than twenty-four (24) hours following first knowledge of the occurrence of the discharge.

59. Defendant OFE's PTOs contain emergency response plans which set forth the actions that Defendant OFE is required to take to contain or manage a manure spill, overflow, or discharge as set forth by Ohio Adm. Code 901:10-2-17.

60. Ohio Revised Code 903.07 and Ohio Adm. Code 901:10-1-06 require the management and handling of manure at a MCAFF, including the land application of manure or the removal of manure from a manure storage or treatment facility, to be conducted by or under the supervision of a Certified Livestock Manager.

61. Ohio Adm. Code 901:10-1-09 sets forth the requirements for the request and issuance of major operational changes. Ohio Adm. Code 901:10-1-09 prohibits an owner or operator from commencing with any changes proposed in the planned major

- operational change submitted to ODA until ODA has approved the planned major operational change and has notified the owner or operator in writing of such approval.
62. Defendant OFE owns and operates four public water systems, which are nontransient non-community water systems, as that term is defined in Ohio Adm. Code 3745-81-01.
63. Defendant OFE owns and operates nontransient non-community water system ID# 4555612 at Croton Layer 1, 11995 Croton Road, Licking County, Croton, Ohio 43013.
64. Defendant OFE owns and operates nontransient non-community water system ID# 4555712 at Croton Layer 2, 9300 Croton Road, Licking County, Johnstown, Ohio 43031.
65. Defendant OFE owns and operates nontransient non-community water system ID# 4555812 at Croton Layer 3, 11652 Clover Valley Road, Croton, Ohio 43013.
66. Defendant OFE owns and operates nontransient non-community water system ID# 4555912 at Croton Layer 4, 11492 Westley Chapel Road, Croton, Ohio 43013.
67. Ohio Revised Code 6109.31 sets forth that no person may violate R.C. Chapter 6109, any rule adopted under it, or any order granted by the Director of Ohio EPA under it, and that each day of noncompliance is a separate violation.
68. Ohio Adm. Code 3745-81-21 sets forth requirements for coliform monitoring at public water systems.
69. Ohio Adm. Code 3745-81-21 requires a non-community water system using only ground water or purchased water and serving not more than one thousand persons to monitor total coliform with at least one sample each calendar quarter that the non-community water system provides water to the public.
70. Ohio Adm. Code 3745-81-32 sets forth requirements for an owner or operator's public notification of violations from a public water system.

71. Ohio Adm. Code 3745-95-02 prohibits any person from installing or maintaining a water service connection to any premises where actual or potential cross-connections to a public water system or a consumer's water system may exist.
72. Ohio Adm. Code 3745-81-04 authorizes the Director of Ohio EPA to assess administrative penalties for a public water system's noncompliance through the Director of Ohio EPA's orders.
73. Ohio Revised Code 6111.04 prohibits a person from causing pollution or placing or causing to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the State, except in accordance with the terms of a National Pollution Discharge Elimination System ("NPDES") permit.
74. Ohio Adm. Code 3745-33-02 prohibits a person from discharging any pollutant or causing, permitting or allowing a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of Ohio Adm. Code Chapter 3745-33.
75. Ohio Adm. Code 3745-1-04(A) states that surface "waters of the state" shall be free from suspended solids or other substances that enter waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life.
76. Ohio Adm. Code 3745-1-04(C) states that waters shall be free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance.

77. Ohio Adm. Code 3745-1-04(D) states that surface “waters of the state”, shall be free from substances that enter waters as a result of human activity in concentrations that are toxic or harmful to human, animal, or aquatic life or are rapidly lethal in the mixing zone.
78. Ohio Adm. Code 3745-1-07 provides limits for ammonia levels in waters of the state based on the relevant water pH and temperature and states that the maximum allowable limit in waters of the state regardless of applicable pH or temperature is 13 mg/L of ammonia.
79. The ODA LEPP Executive Director and ODA LEPP inspectors are authorized representative(s) of the ODA Director.
80. “Ditch,” as defined in Ohio Adm. Code 901:10-1-01(CC), means an excavation, either dug or natural, for the purpose of drainage or irrigation.
81. “Distribution and utilization,” currently defined in Ohio Adm. Code 901:10-1-01(BB), means any method of manure management not under the control of the facility.
82. “Fabricated structure,” as defined in Ohio Adm. Code 901:10-1-01(HH), means a type of manure storage or treatment facility constructed of engineered, man-made materials such as cast-in-place reinforced concrete, pre-cast concrete, masonry, timber, steel, fiberglass or plastic but does not mean a manure storage pond, a manure treatment lagoon or any of the components of either a manure storage pond or manure treatment lagoon such as described in Ohio Adm. Code 901:10-2-06 (A)(9)(c)(ii). A fabricated structure may contain either solid or liquid manure.
83. “Land application areas,” currently defined in Ohio Adm. Code 901:10-1-01(TT), means land under the control of a concentrated animal feeding operation, whether it is

owned, rented, leased or otherwise under the control of the owner or operator, to which manure, or process wastewater from the production area is or may be applied.

84. "Layer" is an agricultural term for a chicken that is capable of laying eggs.

85. "Manure," as defined in R.C. 903.01(O), means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.

86. "Manure storage or treatment facility," as defined in Ohio Adm. Code 901:10-1-01(CCC), means any excavated, diked or walled structure or combination of structures designed for the biological stabilization, holding or storage of manure. These facilities include manure storage ponds, manure treatment lagoons, fabricated structures, stormwater ponds, egg wash lagoons, manure storage sheds, stockpiles, under house or pit storages, and composting areas.

87. "Manure storage pond," as defined in Ohio Adm. Code 901:10-1-01(DDD), means a type of manure storage or treatment facility consisting of an earthen impoundment made by constructing an embankment and/or excavating a pit, the purpose of which is to store or settle manure. A manure storage pond contains liquid manure.

88. "Mortality composting," as defined in R.C. 903.01(R), means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.

89. "Maximum contaminant level," as defined in Ohio Adm. Code 3745-81-01(TT), means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
90. "Non-community water system," as defined in Ohio Adm. Code 3745-81-01(FFF)(2), means a public water system that is not a community water system.
91. "Community water system," as defined in R.C. 6109.01(E) and Ohio Adm. Code
92. 3745-81-01(FFF)(1), means a public water system that has at least fifteen service connections used by year-round residents or that regularly serves at least twenty-five year-round residents.
93. "Nontransient non-community water system," as defined in Ohio Adm. Code 3745-81-01(FFF)(2)(a), means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year.
94. "Public water system," as defined in R.C. 6109.01(A), means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. "Public water system" includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, any collection or pretreatment storage facilities not under such control that are used primarily in connection with the system, and any water supply system serving an agricultural labor camp as defined in R.C. 3733.41.
95. "Pullet" is an agricultural term for a chicken that is not capable of laying eggs due to immaturity.

96. "Waters of the state," as defined by R.C. 6111.01, means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters. Ohio Revised Code 903.01 incorporates the definition of "waters of the state" in R.C. 6111.01 by reference.

97. The Sandusky River and its tributary, Tymochtee Creek, Carroll Ditch, and any unnamed tributaries including road drainage systems within the watershed, each constitute "waters of the state," as defined in R.C. 6111.01 and R.C. 903.01.

98. The Otter Fork Licking River, its tributaries, named and unnamed, including any road drainage systems within the watershed, each constitute "waters of the state," as defined in R.C. 6111.01 and R.C. 903.01

99. Ohio Adm. Code 901:10-1-10 prohibits any person from violating the terms and conditions of a PTO issued by the ODA.

100. All rules from Ohio Adm. Code Chapter 901:10 cited in this Complaint were adopted pursuant to R.C. 903.10.

101. The general allegations set forth in paragraphs one through 100 are hereby incorporated into each and every count of this Complaint as if restated therein.

II. COUNTS

A. CROTON HATCHERY/BREEDER PULLET

COUNT 1

FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN REQUIREMENTS AT CROTON HATCHERY/BREEDER PULLET

102. On or about December 20, 2004, January 1, 2005 through April 11, 2005, December 1, 2005 through January 30, 2006, and/or on other dates currently unknown to Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFHB-0001.PO001.LICK by failing to maintain complete vegetation control within a three feet perimeter of the barns as required; failing to complete and maintain records in the operating record; failing to conduct inspections; failing to maintain moisture at 30% or less at the facility; and failing to collect or timely submit to ODA quarterly manure moisture data.

103. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFHB-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 2

**FAILURE TO COMPLY WITH THE DISTRIBUTION AND UTILIZATION
RECORDKEEPING REQUIREMENTS AT CROTON HATCHERY/BREEDER
PULLET**

104. The manure management plan in PTO No. OFHB-0001.PO001.LICK requires the Defendant OFE to maintain records documenting the distribution and utilization of manure as part of the Croton Hatchery/Breeder Pullet's operating record.

105. Hatchery waste is manure, as that term is defined in R.C. 903.01(O).

106. On or about the period from January 1, 2005 through April 11, 2005, and on other dates unknown to Plaintiff, Defendant OFE failed to maintain records documenting the removal of manure distribution and utilization in the operating record.

107. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFHB-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per violation for each day of each violation, including each violation occurring after the filing of this Complaint.

B. CROTON LAYER 1

COUNT 3

FAILURE TO INSTALL STORMWATER POND IN COMPLIANCE WITH PTI No. OFL1-0001.PI001.LICK and PTO No. OFL1-0001.PO001.LICK AT CROTON LAYER 1

108. PTI No. OFL1-0001.PI001.LICK including detailed maps and plans within the permit provides the exact location for the stormwater pond and PTO No. OFL1-0001.PO001.LICK provides that the maximum volume permitted for the stormwater pond is 16,295,000 gallons.

109. Based on information and belief, on or about November 2004, Defendant OFE began building a new stormwater pond at a different location at the facility. The new stormwater pond had a design capacity of approximately 19,836,000 gallons. The new stormwater pond's construction, increased volume capacity, and relocation were not authorized by PTI No. OFL1-0001.PI0001.LICK and PTO No. OFL1-0001.PO001.LICK.

110. Based on information and belief, from on or about November 2004 through September 2007, Defendant OFE continued to construct and use the new stormwater pond without authorization in PTI No. OFL1-0001.PI0001.LICK, PTO No. OFL1-0001.PO001.LICK, PTO No. OFL1-0001.PO001.LICK, or from ODA.

111. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-09, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL1-0001.PI001.LICK and PTO No. OFL1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE

is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 4

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL
REQUIREMENTS AT CROTON LAYER 1**

112. On or about November 2004 through March 9, 2005; January 1, 2005 through June 30, 2005; August 8, 2005; August 12, 2005 through August 17, 2005; September 6, 2005; January 1, 2006 through January 31, 2006; July 1, 2006 through September 30, 2006; October 1, 2006 through December 31, 2006; January 1, 2007 through March 31, 2007; July 1, 2007 through September 30, 2007; October 1, 2007 through December 31, 2007; and/or on other dates and periods currently unknown to Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect Rodent Control Plan of PTO No. OFL1-0001.PO001.LICK by failing to complete and/or document required inspections; failing to maintain manure moisture levels below the 30% limit at the facility; failing to apply insecticide to manure prior to removal from the barns and monitor the stockpiles; and failing to maintain air flow by the pit fans to properly dry manure as required.

113. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 5

**FAILURE TO COMPLY WITH SOIL SAMPLING REQUIRMENTS AT
CROTON LAYER 1**

114. The manure management plan of PTO No. OFL1-0001.PO001.LICK requires that soil samples must represent a land application site with one composite soil sample representing no more than 25 acres or one composite soil sample for each land application size, whichever is less.

115. On or about February 11, 2005, Defendant OFE provided a soil sample for a 40-acre land application area from the center pivot.

116. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-13, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 6

**FAILURE TO MAINTAIN ADEQUATE OPERATING LEVELS AT CROTON
LAYER 1**

117. The manure management plan - waste water/stormwater plan in PTO No. OFL1-0001.PO001.LICK states the operating level for the stormwater pond is eight feet with an additional two feet of freeboard remaining.

118. On or about January 19, 2006, an ODA LEPP inspector found that the stormwater pond was operating at full capacity with a depth of ten feet, two feet above the required operating level, which left no freeboard despite the requirement of two feet of freeboard.

119. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars.

COUNT 7

**FAILURE TO PROPERLY CONDUCT AND/OR DOCUMENT INSPECTIONS
OF THE STORMWATER POND AT CROTON LAYER 1**

120. The manure management plan – waste water/stormwater plan in PTO No. OFL1-0001.PO001.LICK sets forth that stormwater pond inspections are to be conducted on a daily basis and include an inspection of freeboard by a Compliance Officer. The results of the stormwater pond inspections are to be documented in the operating record.

121. On various dates prior to January 19, 2006, and on other dates as yet unknown to Plaintiff, Defendant OFE failed to maintain inspection records documenting daily inspections in the operating record for the required stormwater pond inspection immediately preceding January 19, 2006.

122. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 8

**FAILURE TO PROPERLY NOTIFY ODA OF DISCHARGES TO THE WATERS
OF THE STATE AT CROTON LAYER 1**

123. The emergency response plan in the PTO No. OFL1-0001.PO001.LICK also requires Defendant OFE to notify ODA of discharges, the approximate amount and characteristics of the discharge, the waters of the state affected by the discharge if applicable, the circumstances of the discharge, the steps taken to clean up the discharge, and the persons with knowledge of and responsibility for the cleanup of the discharge as soon as possible but in no case no more than twenty-four (24) hours following first knowledge of the occurrence of the discharge.

124. On or about January 19, 2006, and on other dates as yet unknown to Plaintiff, Defendant OFE discharged storm water from the storm water pond through a large culvert that passes under Parsons Road, then flowed into a grassed waterway that carried the discharged storm water north and deposited it into an unnamed tributary of Otter Fork Licking River. Further investigations of the site revealed that stormwater had collected and was nearly overflowing in an area along Parsons Road that had been excavated between the stormwater pond and the egg wash pond. At no time did ODA receive notification from Defendant OFE of the discharge as required. Defendant OFE also failed to contact Ohio EPA as required.

125. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-17, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio

civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 9

**FAILURE TO MAINTAIN A CERTIFIED LIVESTOCK MANAGER AT
CROTON LAYER 1**

126. PTI No. OFL1-0001.PI001.LICK requires Defendant OFE to use a Certified Livestock Manager and list this person on the PTO.

127. On February 6, 2008, June 5, 2008, and on other dates as yet unknown to Plaintiff, Defendant OFE failed to have a Certified Livestock Manager available at its facility.

128. The conduct alleged in this Count constitutes violations of R.C. 903.07, Ohio Adm. Code 901:10-1-06, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL1-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 10

**UNAUTHORIZED LAND APPLICATION OF MANURE AND THE FAILURE
TO SUBMIT REQUIRED PLAN IN VIOLATION OF PTO No. OFL1-
0001.PO001.LICK AT CROTON LAYER 1**

129. The manure management plan in PTO No. OFL1-0001.PO001.LICK requires that, by December 31, 2006, Defendant OFE must have a system in place to replace the current 40-acre center pivot system for land application considering that the phosphorus level exceeds 150 parts per million in this area and in the farm land surrounding this area.

130. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

131. On or about February 6, 2008, and on other dates as yet unknown to Plaintiff, Defendant OFE continued to utilize the center pivot system for egg wash waste water land application producing soil with phosphorus levels reaching 915 parts per million and 669 parts per million.

132. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 11

FAILURE TO INSTALL DEPTH MARKER IN STORMWATER POND AND EGG WASH LAGOONS AT CROTON LAYER 1

133. PTI No. OFL1-0001.PI001.LICK requires Defendant OFE to install and maintain a depth marker in the stormwater pond and egg wash lagoons 1 and 2 as set forth in the engineering plans.

134. On or about February 6, 2008, June 5, 2008 and other dates as yet unknown to Plaintiff, Defendant OFE failed to possess and/or maintain a depth marker for the stormwater pond.

135. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL1-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for

each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 12

**FAILURE TO COMPLY WITH BARN RENOVATION SCHEDULE IN
VIOLATION OF PTI No. OFL1-0001.PI001.LICK AT CROTON LAYER 1**

136. PTI No. OFL1-0001.PI001.LICK sets forth the required barn renovation schedule for the barns at Croton Layer 1.

137. PTI No. OFL1-0001.PI001.LICK requires remodeling to begin with three (3) barns in 2006 and two (2) barns to be populated in 2006.

138. Based on information and belief, Defendant OFE failed to begin to construct any barns in 2006 and also failed to populate any barns in 2006.

139. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFL1-0001.PI001.LICK for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

C. CROTON LAYER 2

COUNT 13

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL
REQUIREMENTS AT CROTON LAYER 2**

140. On or about November 2004 through March 9, 2005; January 1, 2005 through March 31, 2005; January 1, 2005 through June 30, 2005; August 11, 2005; September 6, 2005; July 1, 2005 through September 30, 2005; and/or on other dates and periods

unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFL2-0001.PO001.LICK by failing to maintain manure moisture levels below the 30% limit at the facility; failing to complete and/or document inspections as required; failing to maintain the proper operation of the pit fans to increase air flow and reduce the potential for fly breeding; failing to perform two affirmative actions by the Site Production Manager within 24 hours to control insect populations after barns 20 and 28 had speck cards with a level greater than 74; and failing to maintain complete vegetation control within a three-foot perimeter of the barns.

141. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL2-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 14

FAILURE TO SUBMIT APPROPRIATE SIZED SOIL SAMPLE IN VIOLATION OF PTO No. OFL2-0001.PO001.LICK AT CROTON LAYER 2

142. The manure management plan of PTO No. OFL2-0001.PO001.LICK requires that soil samples must represent a land application site with one composite soil sample representing no more than 25 acres or one composite soil sample for each land application size, whichever is less.

143. On or about February 14, 2005, OFE provided a soil sample for a 40-acre land application area from the center pivot.

144. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-13, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL2-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 15

FAILURE TO MAINTAIN ADEQUATE OPERATING LEVELS AT CROTON LAYER 2

145. The manure management plan – waste water/stormwater plan in PTO No. OFL2-0001.PO001.LICK states the operating level for the stormwater pond is five feet and six inches with an additional two feet of freeboard remaining.

146. On or about January 19, 2006; January 17, 2007; February 6, 2008; and other dates as yet unknown to Plaintiff, Defendant OFE operated the storm water pond above the required operating level. On January 19, 2006, the storm water was spilling over the storm water pond into the perimeter containment barns (ditches). The perimeter ditch on the north side of the facility was full with storm water and backed up between the barns and in front of barn 16, and the perimeter ditch on the south side of the facility was full.

147. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL2-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 16

**FAILURE TO PROPERLY CONDUCT AND OR DOCUMENT INSPECTIONS
OF THE STORMWATER POND IN THE OPERATING RECORD AT CROTON
LAYER 2**

148. The manure management plan – waste water/stormwater plan in PTO No. OFL2-0001.PO001.LICK sets forth that stormwater pond inspections are to be conducted on a daily basis and include an inspection of freeboard by a Compliance Officer. The results of the stormwater pond inspections are to be documented in the operating record.

149. On or about January 19, 2006 and other dates as yet unknown to Plaintiff, Defendant OFE failed to maintain inspection records documenting daily inspections in the operating record for the stormwater pond inspection.

150. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL2-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 17

**FAILURE TO MAINTAIN A CERTIFIED LIVESTOCK MANAGER AT
CROTON LAYER 2**

151. PTI No. OFL2-0001.PI001.LICK requires Defendant OFE, as a MCAFF, to use a Certified Livestock Manager and list this person on the PTO.

152. On or about February 6, 2008 and June 5, 2008, Defendant OFE failed to have a Certified Livestock Manager available at its facility.

153. The conduct alleged in this Count constitutes violations of R.C. 903.07, Ohio Adm. Code 901:10-1-06, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL2-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation.

COUNT 18

UNAUTHORIZED LAND APPLICATION OF MANURE AND THE FAILURE TO SUBMIT REQUIRED PLAN AT CROTON LAYER 2

154. The manure management plan in PTO No. OFL2-0001.PO001.LICK requires that, by December 31, 2006, Defendant OFE must have a system in place to replace the current forty (40) acre center pivot system for land application considering that the phosphorus level exceed 150 parts per million in this area and in the farm land surrounding this area.

155. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

156. On or about February 6, 2008 and on other dates as yet unknown to Plaintiff, Defendant OFE had not replaced and had operated the center pivot for egg wash waste water land application producing soil sample results with phosphorus levels reaching 973 parts per million and 870 parts per million.

157. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL2-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio

civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 19

**FAILURE TO COMPLY WITH BARN RENOVATION SCHEDULE AT
CROTON LAYER 2**

158. PTI No. OFL2-0001.PI001.LICK sets forth the required barn renovation schedule for the barns at Croton Layer 2.

159. PTI No. OFL2-0001.PI001.LICK requires remodeling to begin with ten barns and for completion and population of seven barns during 2005. PTI No. OFL2-0001.PI001.LICK also requires the completion of remodeling and population for three barns in 2006.

160. Based on information and belief, Defendant OFE failed to begin construction or complete construction of any barns in 2005 and 2006 as required.

161. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFL2-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

D. CROTON LAYER 3

COUNT 20

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL
REQUIREMENTS AT CROTON LAYER 3**

162. On or about November 2004 through March 9, 2005; November 2004 through March 31, 2005; December 6, 2004; January 1, 2005 through March 31, 2005; January 1, 2005 through June 30, 2005; April 1, 2005 through June 30, 2005; January 1, 2006 through March 31, 2006; and/or other dates and periods unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFL3-0001.PO001.LICK by failing to maintain manure moisture levels below the 30% limit at the facility; failing to place rodent bait stations at the outside perimeter of any barns as required; and failing to complete and/or document inspections as required.

163. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL3-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 21

**FAILURE TO PROPERLY INSPECT EGG WASH LAGOONS AT CROTON
LAYER 3**

164. The manure management plan – waste water/stormwater plan in PTO No. OFL3-0001.PO001.LICK requires Defendant OFE to inspect the stormwater pond, egg wash

lagoon 1, and egg wash lagoon 2 on a weekly basis for evidence of erosion, animal damage, or leaks or discharges of the storm water or egg wash waste water.

165. On or about December 6, 2004 and on other dates as yet unknown to Plaintiff, Defendant OFE had failed to detect an inlet pipe that had leaked water and caused erosion to the interior embankment of the egg wash lagoon 1. Two locations in the interior embankment of the egg wash lagoon 2 had also been eroded. Defendant OFE had also failed to find several animal burrows located in the interior embankments of both egg wash lagoon 1 and 2.

166. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL3-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 22

FAILURE TO INSTALL DEPTH MARKER IN STORMWATER POND AT CROTON LAYER 3

167. PTI No. OFL3-0001.PI001.LICK requires Defendant OFE to install and maintain a depth marker in the stormwater pond as set forth in the engineering plans.

168. On or about January 17, 2007 and other dates as yet unknown to Plaintiff, Defendant OFE did not have a depth marker or other appropriate device to monitor the operating level in the stormwater pond as required.

169. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms

and conditions of PTI No. OFL3-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 23

**FAILURE TO COMPLY WITH BARN RENOVATION SCHEDULE AT
CROTON LAYER 3**

170. PTI No. OFL3-0001.PI001.LICK sets forth the required barn renovation schedule for the barns at Croton Layer 3.

171. PTI No. OFL3-0001.PI001.LICK requires remodeling to begin with one barn in 2005, nine barns in 2006, and three barns in 2008 without completion and population of the barns.

172. Based on information and belief, Defendant OFE failed to commence remodeling on any Croton Layer 3 barns in 2005 and/or 2006 as required.

173. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFL3-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 24

**FAILURE TO MAINTAIN A CERTIFIED LIVESTOCK MANAGER AT
CROTON LAYER 3**

174. PTI No. OFL3-0001.PI001.LICK requires Defendant OFE to use a Certified Livestock Manager and list this person on the PTO.

175. On or about February 6, 2008, June 2, 2008 and other dates as yet unknown to Plaintiff, Defendant OFE failed to have a Certified Livestock Manager available at its facility.

176. The conduct alleged in this Count constitutes violations of R.C. 903.07, Ohio Adm. Code 901:10-1-06, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL3-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

E. CROTON LAYER 4

COUNT 25

FAILURE TO INSTALL STORMWATER POND AT CROTON LAYER 4

177. PTI No. OFL4-0001.PI001.LICK and PTO No. OFL4-0001.PO001.LICK were issued by ODA on December 23, 2003.

178. PTI No. OFL4-0001.PI001.LICK, including detailed maps and plans within the permit, provides the exact location for the stormwater pond. PTO No. OFL4-0001.PO001.LICK provides that the maximum volume permitted for the stormwater pond is 10,074,000 gallons.

179. Based on information and belief, on or about November 2004, Defendant OFE began building a new stormwater pond with a design capacity of 13,985,000 gallons at a different, unauthorized location at the facility. The new stormwater pond's construction, increased volume capacity, and relocation were not authorized by PTI No. OFL4-0001.PI0001.LICK and PTO No. OFL4-0001.PO001.LICK.

180. Based on information and belief, from on or about November 2004 through September 2007, Defendant OFE continued to construct and use the new stormwater pond without authorization in PTI No. OFL4-0001.PI0001.LICK, PTO No. OFL4-0001.PO001.LICK, or from ODA.

181. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-09, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL4-0001.PI001.LICK and PTO No. OFL4-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 26

FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN REQUIREMENTS AT CROTON LAYER 4

182. On or about November 2004 through March 9, 2005; January 1, 2005 through March 31, 2005; April 1, 2005 through June 30, 2005; September 6, 2005; July 1, 2005 through September 30, 2005; October 1, 2005 through December 31, 2005; December 1, 2005 through February 4, 2006; January 1, 2006 through March 31, 2006; April 11, 2006 through June 28, 2006; July 1, 2006 through September 30, 2006; October 1, 2006

through December 30, 2006; January 1, 2007 through March 31, 2007; July 1, 2007 through September 30, 2007; February 4, 2006 through February 6, 2006; April 1, 2008 through June 30, 2008; July 1, 2008 through September 30, 2008; and other dates and periods unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFL4-0001.PO001.LICK by failing to maintain manure moisture levels below the 30% limit at the facility; failing to complete and/or document inspections as required; failing to maintain the dryness of manure and maintain the effective operation of the pit fans as pit fans were disconnected, placed on the floor, and/or covered by plastic sheets; and failing to provide to ODA manure moisture data prior to or during a regular inspection.

183. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL4-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 27

FAILURE TO MEET SOIL SAMPLING REQUIREMENTS AT CROTON LAYER 4

184. The manure management plan of PTO No. OFL4-0001.PO001.LICK requires that soil samples must represent a land application site with one composite soil sample representing no more than 25 acres or one composite soil sample for each land application site, whichever is less.

185. On or about March 28, 2005, Defendant OFE provided a soil sample for a 40-acre land application area from the center pivot.

186. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-13, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL4-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 28

FAILURE TO INSTALL DEPTH MARKERS AT CROTON LAYER 4

187. PTI No. OFL1-0001.PI001.LICK requires Defendant OFE to install and maintain a depth marker in the stormwater pond and the egg wash lagoons 1 and 2 as set forth in the engineering plans.

188. On or about December 17, 2004 and other dates as yet unknown to Plaintiff, Defendant OFE failed to possess and/or maintain a depth marker in the stormwater pond.

189. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL4-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 29

**FAILURE TO MAINTAIN A CERTIFIED LIVESTOCK MANAGER AT
CROTON LAYER 4**

190. PTI No. OFL4-0001.PI001.LICK requires Defendant OFE to use a Certified Livestock Manager and list this person on the PTO.

191. On or about February 6, 2008, June 5, 2008 and on other dates as yet unknown to Plaintiff, Defendant OFE failed to have a Certified Livestock Manager available at its facility.

192. The conduct alleged in this Count constitutes violations of R.C. 903.07, Ohio Adm. Code 901:10-1-06, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTI No. OFL4-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 30

**UNAUTHORIZED LAND APPLICATION OF MANURE AND THE FAILURE
TO SUBMIT REQUIRED PLAN AT CROTON LAYER 4**

193. The manure management plan in PTO No. OFL4-0001.PO001.LICK requires that, by December 31, 2006, Defendant OFE is required to have a system in place to replace the current 40-acre center pivot system for land application considering that the phosphorus level exceeds 150 parts per million in this area and in the farm land surrounding this area.

194. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

195. On or about February 6, 2008 and on other dates as yet unknown to Plaintiff, Defendant OFE had not replaced and had used the center pivot for egg wash waste water land application, producing soil sample results with phosphorus levels reaching 627 parts per million and 835 parts per million.

196. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFL4-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 31

FAILURE TO COMPLY WITH BARN RENOVATION SCHEDULE AT CROTON LAYER 4

197. PTI No. OFL4-0001.PI001.LICK sets forth the required barn renovation schedule for the barns at Croton Layer 4.

198. PTI No. OFL4-0001.PI001.LICK requires remodeling to begin with three barns in 2006 and two barns to be completed and populated in 2006, and remodeling to begin with three barns in 2007 and four barns to be completed and populated in 2007.

199. Based on information and belief, Defendant OFE only began construction on one barn in 2006 and only completed construction for population for one barn in 2006. Also, Defendant OFE completed construction for population for only three barns in 2007.

200. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFL4-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which

Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

F. CROTON PULLET 1

COUNT 32

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN
REQUIREMENTS AT CROTON PULLET 1**

201. On or about November 2004 through December 31, 2004; January 1, 2005 through March 31, 2005; August 12, 2005 through August 17, 2007; September 6, 2005; October 1, 2005 through December 31, 2005; January 1, 2006 through January 31, 2006; July 1, 2006 through September 30, 2006; January 1, 2007 through March 31, 2007; July 1, 2007 through September 30, 2007; February 4, 2008 through February 6, 2008; April 1, 2008 through June 30, 2008; and/or other dates and periods unknown to Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFP1-0001.PO001.LICK by failing to maintain manure moisture levels below the 30% limit at the facility; failing to apply insecticide to the manure before removal from the barns, failing to monitor the stockpiles, and failing to apply insecticide to the stockpiles to reduce the level of insects as required; failing to maintain vegetation at or below six inches in height between the buildings throughout the facility grounds as required; failing to complete and/or document inspections as required; and failing to provide to ODA manure moisture data for the fourth quarter of 2007 prior to or during a regular inspection.

202. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO

No. OFP1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 33

**FAILURE TO MAINTAIN VEGETATIVE GROWTH AROUND STORMWATER
POND PERIMETER AT CROTON PULLET 1**

203. The manure management plan for PTO No. OFP1-0001.PO001.LICK requires Defendant OFE to inspect and ensure that shrubs, woody growth, or trees are not growing on the dikes and side slopes of the stormwater pond.

204. On or about February 23, 2005, Defendant OFE failed to eliminate woody vegetation growing around the perimeter of the stormwater pond.

205. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 34

**FAILURE TO COMPLY WITH MANURE STORAGE CAPACITY RELATED
TO BIRD POPULATION AT CROTON PULLET 1**

206. The manure management plan in PTO OFP1-0001.PO001.LICK requires Defendant OFE to store manure for 350 days in the fabricated structures, barns 1, 2, 3, 4, and 5.

207. From February 6, 2008 through April 10, 2008, and on other dates currently unknown to Plaintiff, Defendant OFE had less than 120 days of manure storage capacity for its bird population.

208. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-05, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 35

**UNAUTHORIZED LAND APPLICATION OF MANURE AT CROTON
PULLET 1**

209. The manure management plan in PTO No. OFP1-0001.PO001.LICK, in accordance with the requirements and procedures provided in Ohio Adm. Code 901:10-2-14, limits phosphorus application on acres that exceed 150 parts per million Bray P1.

210. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

211. On or about July 21, 2005 and October 9, 2007, Defendant OFE had used the center pivot for egg wash waste water land application producing soil sample results with phosphorus levels reaching 858 parts per million and 207 parts per million.

212. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP1-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

G. CROTON PULLET 2

COUNT 36

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN
REQUIREMENTS AT CROTON PULLET 2**

213. On or about November 2004 through March 9, 2005, except for eight weeks during that period, and other dates and periods unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFP2-0001.PO001.LICK by failing to complete and/or document inspections as required.

214. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP2-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation.

COUNT 37

**FAILURE TO COMPLY WITH BARN RENOVATION SCHEDULE AT
CROTON PULLET 2**

215. PTI No. OFP2-0001.PI001.LICK sets forth the required barn renovation schedule for the barns at Croton Pullet 2.

216. PTI No. OFP2-0001.PI001.LICK requires remodeling to begin with two barns in 2005 and five barns to be completed and populated in 2005.

217. Based on information and belief, Defendant OFE failed to complete and populate any Croton Pullet 2 barns in 2005.

218. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFP2-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

H. CROTON PULLET 3

COUNT 38

FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN REQUIREMENTS AT CROTON PULLET 3

219. On or about January 1, 2005 through March 31, 2005; January 1, 2005 through June 30, 2005; September 6, 2005; October 1, 2005 through December 31, 2005; December 1, 2005 through January 30, 2006; and other dates and periods unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFP3-0001.PO001.LICK by failing to maintain manure moisture levels below the 30% limit at the facility; failing to prevent the presence of abundant and/or extreme level flies and larvae because Defendant OFE failed to effectively dry the manure in the barns; and failing to conduct and/or document inspections as required.

220. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP3-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio

civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 39

**FAILURE TO MAINTAIN VEGETATIVE GROWTH ON POND
EMBANKMENT AT CROTON PULLET 3**

221. The manure management plan for PTO No. OFP3-0001.PO001.LICK requires Defendant OFE to inspect and maintain shrubs, woody growth, and/or trees by eliminating their growth on the dikes and side slopes of the stormwater pond.

222. On or about February 20, 2006 and other dates as yet unknown to Plaintiff, Defendant OFE failed to eliminate woody growth on the storm water pond embankment as documented by trees growing on it.

223. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP3-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 40

**FAILURE TO MAINTAIN ADEQUATE OPERATING LEVELS AT CROTON
PULLET 3**

224. The manure management plan – waste water/stormwater plan in PTO No. OFP3-0001.PO001.LICK states the operating level for the stormwater pond is six feet with two feet of freeboard remaining.

225. On or about February 23, 2005, January 17, 2007, and other dates as yet unknown to Plaintiff, Defendant OFE operated the storm water pond with a depth in excess of the required operating level.

226. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP3-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 41

**FAILURE TO COMPLY WITH BARN RENOVATION SCHEDULE AT
CROTON PULLET 3**

227. PTI No. OFP3-0001.PI001.LICK sets forth the required barn renovation schedule for the barns at Croton Pullet 3.

228. PTI No. OFP3-0001.PI001.LICK requires remodeling to begin with one barn in 2005, to begin remodeling four more barns in 2006, and to complete and populate five barns in 2006.

229. Based on information and belief, Defendant OFE did not begin renovation nor complete and populate any barn in 2005 or 2006.

230. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFP3-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

I. CROTON PULLET 4

COUNT 42

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN
REQUIREMENTS AT CROTON PULLET 4**

231. On or about November 2004 through March 9, 2005; January 1, 2005 through March 31, 2005; January 1, 2005 through June 30, 2005; September 6, 2005; October 1, 2005 through December 31, 2005; January 1, 2006 through January 31, 2006; and other dates and periods unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFP4-0001.PO001.LICK by failing to maintain manure moisture levels below the 30% limit at the facility; failing to prevent the presence of abundant and/or extreme level flies and/or pupae because Defendant OFE failed to effectively dry the manure; and failing to complete and/or document inspections as required.

232. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO

No. OFP4-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 43

UNAUTHORIZED LAND APPLICATION OF MANURE AT CROTON
PULLET 4

233. The manure management plan in PTO No. OFP4-0001.PO001.LICK in accordance with the requirements and procedures provided in Ohio Adm. Code 901:10-2-14, limits phosphorus application on acres that exceed 150 parts per million Bray P1.

234. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

235. On or about February 6, 2008 and on other dates as yet unknown to Plaintiff, Defendant OFE used the center pivot for egg wash waste water land application, producing soil sample results with phosphorus levels reaching 427 parts per million and 254 parts per million.

236. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFP4-0001.PO001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 44

**FAILURE TO COMPLY WITH BARN RENOVATION SCHEDULE AT
CROTON PULLET 4**

237. PTI No. OFP4-0001.PI001.LICK sets forth the required barn renovation schedule for the barns at Croton Pullet 4.

238. PTI No. OFP4-0001.PI001.LICK requires remodeling to begin with one barn in 2005 and to begin remodeling four more barns in 2006, and complete and populate five barns in 2007.

239. Based on information and belief, an ODA LEPP inspector discovered that Defendant OFE did not begin renovation or complete and populate any barn in 2005, 2006, and 2007.

240. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFP4-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

J. GOSHEN PULLET 5

COUNT 45

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN
REQUIREMENTS AT GOSHEN PULLET 5**

241. On or about November 2004 through December 6, 2004; November 2004 through December 31, 2004; December 6, 2004; September 7, 2005; October 7, 2005 through January 7, 2006; August 24, 2005 through March 20, 2006; June 26, 2006; January 1,

2007 through March 28, 2007; September 10, 2007; February 27, 2008; February 28, 2008; and other dates and periods unknown to Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control of PTO No. OFGO-0001.PO001.HARD by failing to complete and/or document inspections and reports as required; failing to place rodent bait stations at the outside perimeter of any barns as required; failing to properly maintain the exhaust fans for barn ventilation; failing to maintain manure moisture levels below the 30% limit at the facility; failing to maintain the proper operation of pit fans in the barns; failing to remove layers from pullet barns which began to produce eggs that fell into the manure increasing its moisture; failing to prevent an abundant and/or extreme accumulation of flies on the scraper boards; and failing to provide to ODA manure moisture data for the fourth quarter of 2007 prior to or during an inspection.

242. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFGO-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 46

**FAILURE TO MAINTAIN VEGETATIVE GROWTH AROUND STORMWATER
POND AT GOSHEN PULLET 5**

243. The manure management plan for PTO No. OFGO-0001.PO001.HARD requires Defendant OFE to inspect, maintain, and eliminate shrubs, woody growth, or trees that grow on the dikes and side slopes of the stormwater pond.

244. On or about March 21, 2005, Defendant OFE failed to maintain and eliminate woody vegetation growing around the perimeter of the stormwater pond.

245. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFGO-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 47

**FAILURE TO CONDUCT AND/OR DOCUMENT GROUNDWATER SAMPLES
AT GOSHEN PULLET 5**

246. The manure management plan in PTO No. OFGO-0001.PO001.HARD requires an annual sampling of groundwater from a well that is properly located, protected, and operated at the facility, and that the groundwater sample be documented in the operating record.

247. On or about January 6, 2008, Defendant OFE failed to conduct and document in the operating record groundwater sampling and analysis as required.

248. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms

and conditions of PTO No. OFGO-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 48

**FAILURE TO PROPERLY DOCUMENT MANURE SAMPLING AND
ANALYSES AT GOSHEN PULLET 5**

249. The manure management plan in PTO No. OFGO-0001.PO001.HARD requires annual sampling and analysis for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, percent total solids, and the measure of solids or liquids in the manure from each manure storage or treatment facility. The manure management plan in PTO No. OFGO-0001.PO001.HARD also requires the documentation of the manure sampling and analysis results in the operating record.

250. Defendant OFE failed to conduct and/or document the 2007 annual manure sampling and analysis results for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, percent total solids, and the measure of solids or liquids in the operating record at Goshen Pullet 5 as required.

251. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-10, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFGO-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation.

K. MOUNT VICTORY LAYER 5

COUNT 49

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN
REQUIREMENTS AT MOUNT VICTORY LAYER 5**

252. On or about April 11, 2005; January 1, 2005 through March 31, 2005; April 1, 2005 through June 30, 2005; April 5, 2005 through June 8, 2005; September 7, 2005; October 1, 2005 through December 31, 2005; March 13, 2006; August 24, 2005 through March 13, 2006; April 2, 2007; July 5, 2007; October 1, 2007 through January 3, 2008; February 27, 2008; January 1, 2008 through March 31, 2008; April 23, 2008; April 24, 2008 through April 25, 2008; April 25, 2008 through May 27, 2008; May 8, 2008; and other dates and periods unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of the Insect and Rodent Control Plan of PTO No. OFMT-0001.PO001.HARD by failing to apply insecticide to the manure prior to the manure's removal from the barns as required; failing to maintain manure moisture levels below the 30% limit at the facility; failing to complete and/or document inspections and reports as required; failing to maintain the proper operation of pit fans; failing to impose additional insect control measures as required; failing to properly apply insecticide to the manure before it was removed from the barns; failing to provide to ODA manure moisture data for the fourth quarter of 2007; failing to address and eliminate a water leak at the facility; and failing to retain manure in the barn until the pupae hatched, which would have allowed Defendant OFE to apply insecticide to the manure and kill the flies that hatched. Further, Defendant OFE removed and provided the land application contractor the manure without stockpiling the manure as required, thus causing an extreme level fly outbreak in and around Richwood, Ohio.

253. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMT-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 50

FAILURE TO DOCUMENT WEATHER CONDITIONS PRIOR TO LAND APPLICATION OF MANURE AT MOUNT VICTORY LAYER 5

254. PTO No. OFMT-0001.PO001.HARD requires that weather conditions, including precipitation, be documented in the operating record using forms included within the permit.

255. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

256. From January 1, 2007 through February 27, 2008, Defendant OFE failed to document the weather conditions, including precipitation, in the operating record prior to the land application of egg wash waste water through the center pivot.

257. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMT-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation.

COUNT 51

**FAILURE TO MEET SOIL SAMPLING REQUIREMENTS AT MOUNT
VICTORY LAYER 5**

258. The manure management plan of PTO No. OFMT-0001.PO001.HARD requires that soil samples must represent a land application site with one composite soil sample representing no more than 25 acres or one composite soil sample for each land application site, whichever is less.

259. On or about August 24, 2005, Defendant OFE failed to provide three soil samples for the 66-acre land application area as required to satisfy the 25-acre requirement.

260. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-13, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMT-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 52

**FAILURE TO COMPLY WITH THE DISTRIBUTION AND UTILIZATION
RECORDKEEPING REQUIREMENTS AT MOUNT VICTORY LAYER 5**

261. The manure management plan in PTO No. OFMT-0001.PO001.HARD requires Defendant OFE to maintain records documenting the distribution and utilization of manure as a part of the operating record.

262. From on or about July 20, 2006 through January 17, 2007, Defendant OFE failed to maintain records documenting the removal of dry manure by distribution and utilization in the operating record.

263. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMT-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per violation for each day of each violation.

COUNT 53

**FAILURE TO COVER MANURE TRANSPORTATION VEHICLES PRIOR TO
LEAVING THE FACILITY AT MOUNT VICTORY LAYER 5**

264. The manure management plan in PTO No. OFMT-0001.PO001.HARD requires Defendant OFE to ensure that all manure transportation vehicles are covered prior to leaving the facility site.

265. Based on information and belief, on or about June 11, 2007, Defendant OFE failed to cover manure transportation vehicles departing from Mount Victory Layer 5 creating an unnecessary odor.

266. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMT-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation.

COUNT 54

**FAILURE TO CONDUCT AND/OR DOCUMENT GROUNDWATER SAMPLES
AT MOUNT VICTORY LAYER 5**

267. The manure management plan in PTO No. OFMT-0001.PO001.HARD requires annual sampling of groundwater from a well that is properly located, protected, and operated at the facility, and that the groundwater sample be documented in the operating record.

268. Defendant OFE failed to conduct the 2007 groundwater sampling and analysis or document the sampling in the operating record as required.

269. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMT-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 55

**FAILURE TO PROPERLY DOCUMENT MANURE SAMPLING AND
ANALYSES AT MOUNT VICTORY LAYER 5**

270. The manure management plan in PTO No. OFMT-0001.PO001.HARD requires annual sampling and analysis for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, percent total solids, and the measure of solids or liquids in the manure from each manure storage or treatment facility. The manure management plan in PTO No. OFMT-0001.PO001.HARD also requires the documentation of the manure sampling and analysis results in the operating record.

271. Defendant OFE failed to conduct or document the 2007 annual manure sampling and analysis results for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, percent total solids, and the measure of solids or liquids in the operating record at Mount Victory Layer 5 as required.

272. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-10, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMT-0001.PO001.HARD, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

L. MARSEILLES LAYER 6

COUNT 56

**FAILURE TO COMPLY WITH INSECT AND RODENT CONTROL PLAN
REQUIREMENTS AT MARSEILLES LAYER 6**

273. On or about November 2004 through December 31, 2004; April 7, 2005 through June 14, 2005; August 24, 2005; October 1, 2005 through December 31, 2005; March 2, 2006; August 24, 2005 through March 2, 2006; April 2, 2007; February 28, 2008; and other dates and periods unknown to the Plaintiff, Defendant OFE did not comply with the terms and conditions of PTO No. OFMA-0001.PO001.WYAN by failing to maintain manure moisture levels below the 30% limit at the facility; failing to complete and/or document inspections and reports as required; failing to maintain the vegetation on the facility grounds; failing to maintain the proper operation of the pit fans to dry manure; failing to timely remove manure from the barns as required; failing to implement insect control measures at the upper level of the barns; and failing to provide to ODA manure moisture data for the fourth quarter of 2007 prior to or during an inspection.

274. The conduct alleged in this Count constitutes violations of R.C. 903.06, Ohio Adm. Code 901:10-2-19, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation, including each violation occurring after the filing of this Complaint.

COUNT 57

**FAILURE TO COMPLY WITH THE DISTRIBUTION AND UTILIZATION
RECORDKEEPING REQUIREMENTS AT MARSEILLES LAYER 6**

275. The manure management plan in PTO No. OFMA-0001.PO001.WYAN requires that the owner or operator is required to maintain records documenting the distribution and utilization of manure as a part of the operating record.

276. On or about the period from October 16, 2006 through January 5, 2007, Defendant OFE failed to maintain records documenting the removal of dry manure by distribution and utilization in the operating record.

277. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per violation for each day of each violation.

COUNT 58

**UNAUTHORIZED LAND APPLICATION – STOCKPILE OF MANURE AT
MARSEILLES LAYER 6**

278. PTO No. OFMA-0001.PO001.WYAN requires that any stockpiling or land-application of manure must occur at least 300 feet from any waters of the State.

279. Egg shells are manure, as that term is defined in R.C. 903.01(O).

280. On or about June 26, 2006 and other dates presently unknown to Plaintiff, Defendant OFE land applied or stockpiled egg shells in a field which was only 186 feet from a roadside ditch that directly conveys into an unnamed tributary, that flows into the Tymochtee Creek, a tributary of the Sandusky River. Defendant OFE did not receive prior written authorization from ODA to stockpile egg shells.

281. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

COUNT 59

**UNAUTHORIZED EGG WASH WASTE WATER DISCHARGE AT
MARSEILLES LAYER 6**

282. The manure management plan in PTO No. OFMA-0001.PO001.WYAN requires Defendant OFE to obtain prior approval from ODA before land applying manure on frozen or snow-covered ground. Once ODA's approval to land-apply manure on frozen or snow-covered ground is obtained, Defendant OFE must use a land application rate less

than or equal to 5,000 gallons of manure per acre, and the land must have at least 90% cover on the frozen or snow-covered ground.

283. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

284. On or about March 6, 2007, Defendant OFE land applied egg wash waste water during the afternoon to an unauthorized bean field with less than 90% cover as required. Defendant OFE applied 11,100 gallons to 2.12 acres of the bean field, at a rate that exceeded the 5,000-gallons per acre requirement.

285. On or about March 6, 2007 through March 7, 2007, Defendant OFE land applied an additional 757,044 gallons of egg wash waste water to a grass field in excess of the 5,000 gallons per acre requirement.

286. On or about March 7, 2007, ODA documented egg wash waste application water flowing from the land application area into a road side ditch and thus into waters of the state.

287. On or about March 8, 2007, egg wash waste water had also flowed from the land application area through a fence row and into a bean field, where the egg wash waste water ran into the roadside ditch and, again, into waters of the state.

288. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief for each violation pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per each violation for each day of each violation, including each day of violation.

COUNT 60

**FAILURE TO PROPERLY NOTIFY ODA OF DISCHARGES AT MARSEILLES
LAYER 6**

289. The emergency response plan in the PTO No. OFMA-0001.PO001.WYA also requires Defendant OFE to notify ODA of a discharge, the approximate amount and characteristics of the discharge, the waters of the state affected by the discharge, the circumstances of the discharge, and the persons with knowledge of and responsibility for the cleanup of the discharge as soon as possible but in no case no more than one hour following first knowledge of the occurrence of the discharge.

290. Defendant OFE failed to notify ODA of discharges of egg wash waste water from Marseilles Layer 6 which reached waters of the state on March 7 and 8, 2007 until after a representative of ODA personally inspected the facility. Defendant OFE also failed to contact Ohio EPA as required.

291. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-17, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation.

COUNT 61

**FAILURE TO MAINTAIN ADEQUATE OPERATING LEVELS AT
MARSEILLES LAYER 6**

292. The manure management plan – waste water/stormwater plan in PTO No. OFMA-0001.PO001.WYAN states the operating level for egg wash lagoon 2 is 11 feet and eight inches with an additional two feet of freeboard remaining.

293. On or about February 21, 2007, Defendant OFE failed to maintain the required operating level at egg wash lagoon 2.

294. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars.

COUNT 62

**FAILURE TO INSTALL DEPTH MARKER IN EGG WASH LAGOONS AT
MARSEILLES LAYER 6**

295. PTO No. OFMA-0001.PI001.WYAN requires Defendant OFE to install and maintain a depth marker in egg wash lagoon 1 and egg wash lagoon 2 as set forth in the engineering plans.

296. On or about February 28, 2008 through September 15, 2008, Defendant OFE failed to possess and/or maintain a depth marker or other appropriate device to monitor the operating levels in the egg wash lagoon 1 and the egg wash lagoon 2.

297. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-06, Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms

and conditions of PTI No. OFMA-0001.PI001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation.

COUNT 63

**FAILURE TO PROPERLY INSPECT AND REPAIR EGG WASH LAGOONS AT
MARSEILLES LAYER 6**

298. The manure management plan – waste water/stormwater plan in PTO No. OFMA-0001.PO001.WYAN requires Defendant OFE to inspect egg wash lagoon 1 and egg wash lagoon 2 on a weekly basis for evidence of erosion, animal damage, or leaks or discharges of the egg wash waste water.

299. On or about February 28, 2008 through July 7, 2008, Defendant OFE failed to inspect and repair damage to the north side of egg wash lagoon 1. The damage impaired the integrity of the embankment.

300. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation.

COUNT 64

**FAILURE TO DOCUMENT WEATHER CONDITIONS PRIOR TO LAND
APPLICATION OF MANURE AT MARSEILLES LAYER 6**

301. PTO No. OFMA-0001.PO001.WYAN requires Defendant OFE to document weather conditions, including precipitation, in the operating record prior to land application of manure.

302. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

303. From on or about January 1, 2007 through February 28, 2008, Defendant OFE failed to document the weather conditions, including precipitation, prior to the land application of egg wash waste water.

304. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation.

COUNT 65

**FAILURE TO CONDUCT AND/OR DOCUMENT GROUNDWATER SAMPLES
AT MARSEILLES LAYER 6**

305. The manure management plan in PTO No. OFMA-0001.PO001.WYAN requires annual sampling of groundwater from a well that is properly located, protected, operated at the facility, and that the groundwater sample be documented in the operating record.

306. Defendant OFE failed to conduct and/or document in the operating record the 2007 groundwater sampling and analysis as required.

307. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars.

COUNT 66

**FAILURE TO PROPERLY DOCUMENT MANURE SAMPLING AND
ANALYSES AT MARSEILLES LAYER 6**

308. The manure management plan in PTO No. OFMA-0001.PO001.WYAN requires annual sampling and analysis for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, percent total solids, and the measure of solids or liquids in the manure from each manure storage or treatment facility. The manure management plan also requires the documentation of the manure sampling and the analysis results in the operating record.

309. Defendant OFE failed to conduct or document in the operating record the 2007 annual manure sampling and analysis results for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, percent total solids, and the measure of solids or liquids at Marseilles Layer 6 as required.

310. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-10, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation.

COUNT 67

**UNAUTHORIZED EGG WASH WASTE WATER VIOLATIONS AT
MARSEILLES LAYER 6**

311. The manure management plan in PTO No. OFMA-0001.PO001.WYAN requires Defendant OFE to comply with the manure application requirements of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-14, and Ohio Adm. Code 901:10-2-16.

312. Egg wash waste water is manure, as that term is defined in R.C. 903.01(O).

313. On or about April 4, 2010; April 5, 2010; April 6, 2010; April 10, 2010; April 11, 2010; April 12, 2010; April 14, 2010; April 15, 2010; April 19, 2010; April 21, 2010; and April 22, 2010, Defendant OFE applied egg wash waste water to the east center pivot field at the Marseilles Facility. Further, on or about April 4, 2010; April 5, 2010; April 6, 2010; April 10, 2010; April 11, 2010; April 12, 2010; April 14, 2010; April 19, 2010; April 21, 2010; and April 22, 2010, Defendant OFE applied egg wash waste water to the middle center pivot field at the Marseilles Facility. On or about April 6, 2010; April 10, 2010; April 11, 2010; April 14, 2010; April 15, 2010; April 18, 2010; April 19, 2010; April 21, 2010; and April 22, 2010, Defendant OFE applied egg wash waste water to the center pivot field at the Marseilles Facility.

314. For every land application event date provided above in Paragraph 314, Defendant OFE failed to record weather conditions for the conditions at the time of the application and for 24 hours prior to and following application.

315. For every land application event date provided above in Paragraph 314, Defendant OFE failed to inspect and/or document inspections of the subsurface drain outlets during and after the application.

316. For every land application event date provided above in Paragraph 314, Defendant OFE failed to provide and describe the acres of land used for the manure application.
317. For every land application event date provided above in Paragraph 314, Defendant OFE failed to accurately document the manure application rate and quantity applied.
318. For every land application event date provided above in Paragraph 314, Defendant OFE failed to document the total amount of nitrogen and phosphorus applied to each manure application field.
319. For every land application event date provided above in Paragraph 314, Defendant OFE failed to calibrate and/or document calibration of the manure application equipment.
320. During the land application event on or about April 22, 2010, Defendant OFE failed to properly apply egg wash water as required, exceeding the available water capacity of the soil. Defendant OFE did not accurately document the available water capacity of the soil, the existence of soil cracks, and other soil conditions at the time of the application for all three center pivot fields as required.
321. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-2-08, Ohio Adm. Code 901:10-2-14, Ohio Adm. Code 901:10-2-16, Ohio Adm. Code 901:10-1-10, and the terms and conditions of PTO No. OFMA-0001.PO001.WYAN, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to ten-thousand (\$10,000) dollars per each violation for each day of each violation.

COUNT 68

EGG WASH WASTE WATER DISCHARGE AT MARSEILLES LAYER 6

322. On April 22, 2010, Defendant OFE failed to properly apply egg wash waste water through three center pivots to three center pivot fields at the Marseilles Layer 6 Facility.

323. Defendant OFE's improper land application from the Marseilles Facility on or about April 22, 2010 caused a discharge of egg wash waste water into the unnamed tributary to Carrol Ditch that enters Tymochtee Creek as documented by the discolored water in the tributary observed by ODA LEPP and Ohio EPA staff.

324. The conduct alleged in this Count constitutes violations of R.C. 6111.04 and R.C. 6111.07(A), for which Defendant OFE is subject to injunctive relief pursuant to R.C. 6111.07(B), and for which Defendant OFE is liable to pay the State a civil penalty of up to and including ten-thousand dollars (\$10,000.00) for each day of each violation pursuant to R.C. 6111.09(A).

COUNT 69

**EGG WASH WASTE WATER VIOLATIONS OF WATER QUALITY
STANDARDS AT MARSEILLES LAYER 6**

325. The allegations set forth in Counts 67 and 68 are incorporated into this Count as if restated herein.

326. The egg wash waste water/manure discharged from the Marseilles Facility on or about April 22, 2010 into waters of the state, adversely affecting aquatic life, and/or causing an increase in the ammonia to levels toxic or harmful to aquatic life, in violation of the narrative water quality standards set forth in Ohio Adm. Code 3745-1-04(A), (C), and (D), and which violated the applicable water quality standards for ammonia set forth in Ohio Adm. Code 3745-1-07.

327. The conduct alleged in this Count constitutes violations of R.C. 6111.07(A) and Ohio Adm. Code 3745-1-04 for which Defendant OFE is subject to injunctive relief pursuant to R.C. 6111.07(B), and for which Defendant OFE is liable to pay the State a civil penalty of up to and including ten-thousand dollars (\$10,000.00) for each day of each violation pursuant to R.C. 6111.09(A).

M. DRINKING WATER COUNT

COUNT 70

**FAILURE TO COMPLY WITH PUBLIC WATER SYSTEM REQUIREMENTS
CONTAINED IN OHIO EPA DIRECTOR'S FINAL FINDINGS AND ORDERS
ISSUED JANUARY 31, 2007**

328. On or about January 31, 2007, the Director of Ohio EPA issued Final Findings and Orders pursuant to R.C. Chapter 6109 requiring Defendant OFE to take certain measures to address human health concerns discovered at OFE's public water systems.

329. The Final Findings and Orders required OFE to comply with total coliform bacteria monitoring and maximum contaminant level requirements in accordance with Ohio Adm. Code 3745-81-21 and Ohio Adm. Code 3745-81-14, respectively.

330. The Final Findings and Orders required OFE to notify the public in accordance with Ohio Adm. Code 3745-81-32 for: an acute maximum contaminant level violation from August 2003 at Croton Layer 1; the failure to monitor for volatile organic chemicals from the July through December 2003 monitoring period at Croton Layer 1; the failure to sample routinely for total coliform during the October through December 2005 monitoring period at Croton Layer 1; the failure to monitor for volatile organic chemicals during the July through December 2003 monitoring period at Croton Layer 4; and the failure to monitor routinely for total coliform during the April through June 2005

monitoring period at Croton Layer 4. The Final Findings and Orders further required OFE to provide copies of all public notices and verification forms to Ohio EPA.

331. The Final Findings and Orders required OFE to sever any connection from the potable public water systems at Croton Layer 1 and Croton Layer 4 to the pond wells within 90 days of January 31, 2007, in order to eliminate any possible cross-connection in accordance with Ohio Adm. Code 3745-95-02.

332. The Final Findings and Orders required OFE to pay thirteen thousand two hundred fifty dollars (\$13,250) in monetary penalties to Ohio EPA pursuant to R.C. 6109.23 and Ohio Adm. Code 3745-81-04. The Final Findings and Orders further required Defendant OFE to pay ten thousand six hundred dollars (\$10,600) within thirty (30) days of January 31, 2007 and gave Defendant OFE an option to pay the remaining two thousand six hundred fifty dollars (\$2,650) to the Ohio EPA's Clean Diesel School Bus Fund to support a Supplemental Environmental Project.

333. On or about March 1, 2007, Defendant OFE exercised its right to appeal the Director of Ohio EPA's Final Findings and Orders to the Environmental Review Appeals Commission. Defendant OFE did not request a stay of the Final Findings and Orders and the appeal of the Final Findings and Orders remains pending.

334. From January 31, 2007 through April 16, 2008, Defendant OFE failed to comply with total coliform bacteria monitoring and maximum contaminant level requirements in accordance with Ohio Adm. Code 3745-81-21 and Ohio Adm. Code 3745-81-14, respectively.

335. From January 31, 2007 through April 16, 2008, Defendant OFE failed to notify the public in accordance with Ohio Adm. Code 3745-81-32 for: an acute maximum

contaminant level violation from August 2003 at Croton Layer 1; the failure to monitor for volatile organic chemicals from the July through December 2003 monitoring period at Croton Layer 1; the failure to sample routinely for total coliform during the October through December 2005 monitoring period at Croton Layer 1; the failure to monitor for volatile organic chemicals during the July through December 2003 monitoring period at Croton Layer 4; and the failure to monitor routinely for total coliform during the April through June 2005 monitoring period at Croton Layer 4. Defendant OFE has also failed to provide copies of all public notices and verification forms to Ohio EPA as required from January 31, 2007 through April 16, 2008.

336. From May 2, 2007 through April 16, 2008, Defendant OFE failed to sever any connection from the potable public water systems at Croton Layer 1 and Croton Layer 4 to the pond wells in order to eliminate any possible cross-connection in accordance with Ohio Adm. Code 3745-95-02.

337. Defendant OFE failed to pay thirteen thousand two hundred fifty dollars (\$13,250) in monetary penalties to Ohio EPA. Defendant OFE also failed to pay ten thousand six hundred dollars (\$10,600) within thirty (30) days of January 31, 2007 and the remaining two thousand six hundred fifty dollars (\$2,650) to the Ohio EPA's Clean Diesel School Bus Fund to support the Supplemental Environmental Project.

338. The conduct alleged in this Count constitutes violations of R.C. 6109.31, R.C. 6109.23, Ohio Adm. Code 3745-81-04, Ohio Adm. Code 3745-81-21, Ohio Adm. Code 3745-81-32, and Ohio Adm. Code 3745-95-02, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 6109.32, and for which Defendant OFE is liable to pay the State of Ohio civil penalties up to twenty-five thousand (\$25,000) dollars per each

violation for each day of each violation pursuant to R.C. 6109.33, including each violation occurring after the filing of this Complaint.

N. **UNAUTHORIZED EXPANSION**

COUNT 71

**FAILURE TO COMPLY WITH THE DESIGN CAPACITY ESTABLISHED
IN PTI NO. OFL3-0001.PI001.LICK AT CROTON LAYER 3**

339. PTI No. OFL3-0001.PI001.LICK sets forth the authorized design capacity for the installation of bird cages at each barn at Croton Layer 3.

340. On or about December 14, 2010 and on other dates presently unknown, Defendant OFE began installing bird cages which exceeded the authorized design capacity in the PTI at Barn 31.

341. The conduct alleged in this Count constitutes violations of Ohio Adm. Code 901:10-1-10 and the terms and conditions of PTI No. OFL3-0001.PI001.LICK, for which Defendant OFE is subject to injunctive relief pursuant to R.C. 903.16, and for which Defendant OFE is liable to pay the State of Ohio civil penalties of up to ten-thousand (10,000) dollars per violation for each day of each violation, including each day of violation after the filing of this Complaint.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

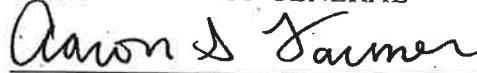
A. Issue an injunction permanently enjoining Defendant OFE from violating R.C. Chapters 903, 6111, and 6109 and the rules adopted under those laws.

- B. Issue an injunction permanently enjoining Defendant OFE from violating any term or condition of any permit issued by ODA or Ohio EPA including any subsequent permits or modifications of permits.
- C. Order Defendant OFE, pursuant to R.C. 903.16, to pay to the State civil penalties of up to ten thousand dollars (\$10,000) per day for each day Defendant OFE has violated or hereafter violates R.C. Chapter 903 or the rules promulgated thereunder, as described in Counts 1 through 67 and 71, for each day in violation thereof after the filing of this Complaint.
- D. Order Defendant OFE, pursuant to R.C. 6111.09, to pay to the State civil penalties of up to ten thousand dollars (\$10,000) per day for each day it has violated or hereafter violates R.C. Chapter 6111 or the rules promulgated thereunder, as described in Counts 68 and 69.
- E. Order Defendant OFE, pursuant to 6109.33, to pay to the State civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day that Defendant OFE has violated or hereafter violates R.C. Chapter 6109 or the rules promulgated thereunder, as described in Count 70, and for each day in violation of thereof after the filing of this Complaint.
- F. Order Defendant OFE to pay thirteen thousand two hundred fifty dollars (\$13,250) in monetary penalties to Ohio EPA or Order Defendant OFE to pay ten thousand six hundred dollars (\$10,600) to Ohio EPA and the remaining two thousand six hundred fifty dollars (\$2,650) to the Ohio EPA's Clean Diesel School Bus Fund.
- G. Order Defendant OFE to pay all costs and fees for this action, including attorney's fees incurred by the Ohio Attorney General's Office.

H. Retain jurisdiction of this suit for the purpose of making any order or decree which this Court may deem necessary at any time to carryout its judgment, and grant such further relief as this Court may deem necessary and appropriate

Respectfully submitted,

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

OHIO FRESH EGGS, LLC,

Defendant.

LICKING COUNTY
COMMON PLEAS COURT

CASE NO. 11 CV 0480
2011 JUN 28 A 10:56

JUDGE

FILED
GARY R. WALTERS
CLERK

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

The Complaint in the above-captioned matter having been filed herein and the Eleventh Set of Charges in Contempt having been filed under the Modified Consent Order for Permanent Injunction for State, ex rel. Ohio Attorney General v. Buckeye Egg Farm, L.P., et. al., Case No. 99 CV 756, and the Plaintiff, State of Ohio by its Attorney General Michael DeWine (hereinafter "Plaintiff"), and Defendant Ohio Fresh Eggs, LLC (hereinafter "OFE"), without admission of fact or liability, have consented to the entry of this Order.

NOW THEREFORE, without trial, admission, or determination of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against the Defendant under Chapters 903, 3704, 3767, 6109, and 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES BOUND AND NOTICE OF SALE/LEASE

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and the Defendant's agents, officers, employees, assigns, successors in interest, and any person acting in concert or privity with any of them, including any buyers or lessees of any of Defendant's facilities, or Austin J. DeCoster, as the Optionee as defined by the 2010 Amended and Restated Option to Purchase ("Option to Purchase"), by and between Ohio Fresh Eggs, LLC, Hillandale Farms of PA, Inc. ("Hillandale II"), Austin J. DeCoster, individually and as Trustee of the DeCoster Revocable Trust dated May 19, 2000 (jointly "DeCoster"), Ohio Investments Co., LLC, a Delaware limited liability company (the "Optionee"), Glessner Business Group, LLC, ("GBG") an Iowa limited liability company (that has acquired the interest formerly held by Ohio Ag Investors, LLC), and Hillandale Farms, LLC ("Hillandale") an Ohio limited liability company (collectively GBG and Hillandale are the "Optionors"), or any Assignee of the Option to Purchase. OFE shall immediately provide a copy of this Consent Order to all key officers and/or employees including, but not limited to: any

Director of Operations, any Senior Production Manager, any Site Production Manager, any administrative compliance personnel, or personnel responsible for communication with Ohio Department of Agriculture ("ODA") or Ohio Environmental Protection Agency ("Ohio EPA"), and any other person(s) serving as environmental compliance officer(s) pursuant to Paragraphs 35 through 38 of this Consent Order. OFE shall submit to the ODA Livestock Environmental Permitting Program ("LEPP") and the Ohio EPA within seven (7) days after the effective date of this Consent Order a signed Certification of Receipt of Consent Order (See Appendix A to this Consent Order) by each such officer or employee as stated above. Each subsequent key officer of OFE or other key employee hired or employed shall be provided by OFE with a copy of this Consent Order immediately upon commencing their employment or responsibilities. OFE shall within seven (7) days after appointing, hiring, or otherwise employing a new officer or key employee submit to ODA and Ohio EPA notice and a Certification of Receipt of Consent Order by each such officer or employee consistent with Appendix A of this Consent Order. Defendant shall provide a copy of this Consent Order to each contractor employed to perform work itemized herein.

3. No change in ownership or status of the Defendant, including but not limited to any transfer of assets or personal property, shall in any way alter Defendant's rights or obligations under this Consent Order. Defendant shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of the Defendant's ownership rights.

III. DESCRIPTION OF FACILITIES

4. The provisions of this Consent Order shall apply to all facilities currently owned and/or in operation by Defendant in the State of Ohio, and any and all additional or renovated poultry or egg production facilities in the State of Ohio built, rebuilt, or renovated by the Defendant or which come into operation by the Defendant without regard to whether such construction or renovation is required under this consent order.

The following is a list of certain of the facilities presently in operation in the State of Ohio subject to this order:

- a. Multiple commercial layer, commercial pullet, breeding and production complexes in Hartford, Monroe, and Bennington Townships in Licking County, Ohio. These facilities, which include four (4) commercial pullet complexes, one of which was formerly referred to as Croton Pullet 3, has been converted to a breeder facility known as Croton Breeder 2 pursuant to the terms and conditions of a Major Operational Change as approved by ODA, four (4) commercial layer complexes, a hatchery, breeder layer, breeder pullet facilities, and the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure storage associated with production and handling of the eggs, are collectively referenced hereafter as the "Croton Facilities."
- b. A commercial layer facility located in Marseilles Township, Wyandot County, approximately two (2) miles southeast of Marseilles, Ohio on Township Road 103. This facility which includes the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure storage associated with production and handling of the eggs will be referenced hereafter as the "Marseilles Layer Farm" or "Marseilles facility."
- c. A commercial layer facility located in Hale Township, Hardin County, approximately two (2) miles east of Mt. Victory, Ohio on County Road 245. This facility and the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure storage associated with production and handling of the eggs will be

referenced hereafter as the "Mt. Victory Layer Farm" or "Mt. Victory facility."

- d. A commercial pullet facility located in Dudley Township, Hardin County, on County Road 255 approximately two (2) miles to the northeast of Hepburn, Ohio. This commercial pullet facility and the necessary support structures for handling of the waste, wastewater, stormwater, and manure storage associated with the facility will be referred to collectively as the "Goshen Pullet Farm #5" or "Goshen facility."
- e. The Mt. Victory facility, the Marseilles facility and the Goshen facility collectively are hereafter referred to as "the Northwest Facilities."

IV. DEFINITIONS

- 5. a. "Manure," as defined in R.C. 903.01(O), means "wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs, animal excreta, discarded products, bedding, process waste water, process-generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta."
- b. "Process waste water," as defined in R.C. 903.01(AA) means "any process generated waste water and any precipitation, including rain or snow, that comes into contact with manure, litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products such as milk or eggs."
- c. "Process generated waste water," as defined in 903.01(Z), means "water that is directly or indirectly used in the operation of an animal feeding facility for any of the following:
 - (1) Spillage or overflow from animal watering systems;
 - (2) Washing, cleaning, or flushing pens, barns, manure pits, or other areas of an animal feeding facility;
 - (3) Direct contact swimming, washing, or spray cooling of animals; or
 - (4) Dust control."

- d. Stormwater for construction projects means stormwater runoff, snow melt and surface runoff and drainage.
- e. "Pollution," as defined in R.C. 6111.01(A), means "the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state."
- f. "Sewage," as defined in R.C. 6111.01(B), means "any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities."
- g. "Other Wastes," as defined in R.C. 6111.01(D), means "garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other "pollutants" or "toxic pollutants" as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste."
- h. "Pollutant," as defined by 33 U.S.C. §1362(6) of the Federal Water Pollution Control Act, means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

V. COMPUTATION OF TIME

- 6. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or State of Ohio or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or State of Ohio or federal holiday.

VI. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

- 7. Plaintiff alleges in the Complaint filed in this case and the Eleventh Set of Charges in Contempt filed under Case No. 99-CV-756, that Defendant has operated its

egg production facilities in Licking, Wyandot, and Hardin counties in violation of the permits issued by the Plaintiff for those facilities and numerous provisions of R.C. Chapters 903, 3704, 3767, 6109, and 6111 and the rules promulgated thereunder. Defendant does not admit the allegations of the Complaint or the Eleventh Set of Charges in Contempt. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant for all claims as alleged in the Complaint and Charges in Contempt in addition to any claim against the Defendant or any other person for the manure discharge to waters of the state from the Defendant's manure application at the Marseilles Facility in March 2007 ("March 2007 Discharge"). This Consent Order shall supersede and terminate any previous Consent Orders in Case No. 99 CV 756.

8. Nothing in this Consent Order addresses, resolves, or in any way applies to the issue of whether Defendant is required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit from the State of Ohio for any of Defendant's facilities under federal or state law. Nothing in this Consent Order shall be construed to either release the Defendant from the obligation to apply for and obtain NPDES permits or to impose that obligation upon the Defendant. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to commence an enforcement action against the Defendant, and any other appropriate individuals, for the failure to apply for and obtain NPDES permits for any past, present, or future discharges of sewage, industrial waste or other waste from each of Defendant's facilities in the State of Ohio. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek any appropriate relief from persons other than the Defendant for claims or

conditions alleged in the Complaint, Contempt Charges, or for the March 2007 Discharge. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to bring any legal or equitable action against any person other than Defendant. Nothing in this Consent Order, including the imposition of stipulated penalties, shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which arise, continue, or occur after the filing of the Consent Order, from any person, including the Defendant. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action, against any person, including the Defendant, to eliminate or mitigate conditions that present a threat to the public health, welfare, or the environment. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to enforce this Consent Order through a subsequent contempt action or to otherwise seek relief pursuant to the terms of this Consent Order for violations of the Consent Order. This Consent Order in no way waives any defense afforded to the Defendant by law in any subsequent contempt action brought by the State. Finally, Defendant reserves all rights that they may have under Ohio's Rules of Civil Procedure.

VII. PERMANENT INJUNCTION

9. Defendant is hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapters 903, 3704, 3767, 6109, and 6111, the rules adopted under these Chapters, all monitoring and reporting requirements, whether imposed by rule, the terms of this Consent Order, or permits issued by Ohio EPA and/or ODA, and the terms and conditions of all permits issued by the Director of Environmental Protection or the Director of ODA to the Defendant or its predecessors for

all of Defendant's operations in Ohio, including, without limitation, all future permits or modifications or renewals issued to Defendant, whether issued by the Director of Environmental Protection or the Director of Agriculture.

VIII. INJUNCTIVE RELIEF

A. CESSATION OF EXPANSION OF THE OFE FLOCK

10. Except as provided in Paragraphs 15 and 16, Defendant is enjoined and hereby ordered to limit the total number of chickens for all of Defendant's facilities at or below 16,684,191 chickens of which no more than 11,552,727 may be layers and no more than 325,000 may be breeders.
11. Of the 11,552,727 layers authorized under Paragraph 10, Defendant is enjoined and hereby ordered to limit the layers to a combined total of no more than 7,205,177 layers at the Croton Facilities and a combined total of no more than 4,347,550 layers at the Mount Victory and Marseilles facilities. Of the 16,684,191 chickens authorized under Paragraph 10, Defendant is also enjoined and hereby ordered to limit the pullets at the Goshen Pullet Farm to a total of no more than 1,976,000 pullets.
12. Defendant is enjoined to immediately obtain a Permit to Operate for all of the facilities referenced in Paragraph 4 which includes but is not limited to the facilities that are not currently stocking birds, in order to maintain compliance with inspections, facility maintenance, and the control of insects and rodents at all facilities. For the purposes of facility maintenance, Defendant shall obtain and comply with any permits or plan approvals including but not limited to any construction stormwater NPDES permit or drinking water plan approvals that may be required.

13. Defendant may apply for and must obtain Permits to Install, Permits to Operate, and NPDES permits from the State of Ohio for Croton Pullet 4 and Croton Layers 1, 3, and 4 on or after January 3, 2011 provided that Defendant complies with the chicken number limits set forth in Paragraphs 10 and 11.

14. Before any expansion or increase of the above current numbers set forth in Paragraphs 10 and 11 can occur, Defendant must demonstrate a minimum of two (2) years of compliance with all environmental laws and rules, the terms and conditions of any State environmental permit, and the terms and conditions of this Consent Order. After a minimum of two (2) years compliance with all environmental laws and rules, the terms and conditions of any State environmental permit, and the terms and conditions of this Consent Order, Defendant may apply for a Permit Install, a Permit to Operate, and a NPDES permit from the State of Ohio to expand any of Defendant's facilities including the Croton Facilities and Northwest Facilities. The compliance period shall not commence before the effective date of this Consent Order.

15. Notwithstanding the terms and conditions provided in Paragraph 14 above, Defendant OFE may apply for a Permit to Install, a Permit to Operate, and a NPDES permit from the State of Ohio for Croton Layer 2 on or after January 1, 2012. However, Defendant OFE must comply with all environmental laws and rules, the terms and conditions of any State environmental permit, and the terms and conditions of this Consent Order for a minimum of two (2) years before Defendant OFE may obtain a Permit to Install, a Permit to Operate, and a NPDES permit from the State of Ohio for Croton Layer 2 and before Defendant OFE may install cages, construct manure storage or

treatment facilities, and stock any additional chickens above the chicken number limits provided in Paragraphs 10 and 11 at Croton Layer 2 as set forth in Paragraph 14 above.

16. Defendant is further enjoined and ordered to limit the number of chickens at the Croton facilities to the flock size and for the time period set forth in Paragraphs 10 through 15 of this Consent Order, regardless of the terms and conditions of any permit to install presently in effect or issued in the future to Defendant until such time as the Defendant obtains specific permission from the State of Ohio, whether through the issuance by Director of the Ohio Department of Agriculture of a permit authorizing a flock expansion at the Croton facilities or other express permit or approval. For emergency purposes and for a temporary time period not to extend beyond August 31, 2011, Defendant OFE is expressly authorized to stock Croton Layer Site #4 at a capacity not to exceed 2,314,386 birds and Croton Layer Site #1 at a capacity not to exceed 2,401,726 birds, so long as Defendant OFE refrains from stocking any birds at Croton Layer Site #3 and Defendant OFE complies with all of the conditions of the existing permits. Defendant OFE shall not install additional cages in any barn at any Croton facilities or Northwest facilities until new permits to install are issued except for Barn 29 and Barn 31 at Croton Layer Site #3. Notwithstanding the limited permission to install cages in Barn 29 and Barn 31 at Croton Layer Site #3, Defendant OFE shall not connect the feed lines to the main feed bins, shall not connect the water lines to the main water service line, and shall not stock birds in Barn 29 and Barn 31 at Croton Layer Site #3 until the Ohio Department of Agriculture grants express approval in accordance with the terms and conditions of this Order.

17. Defendant is further enjoined and ordered to limit the number of chickens at the Northwest Facilities to the flock size and for the time period set forth in Paragraphs 10 through 15 of this Consent Order, regardless of the terms and conditions of any permit to operate presently in effect or issued in the future to Defendant until such time as the Defendant obtains specific permission from the State of Ohio, whether through the issuance by the Director of the Ohio Department of Agriculture of a permit authorizing a flock expansion at the Northwest facilities or other express permit or approval.

B. STORMWATER CONTROL

18. Defendant is enjoined and ordered to immediately comply with the terms and conditions of the general storm water control permits issued under the NPDES for construction activities, permit number OHR100000 and any subsequent modifications and/or reissuance of this permit, or any subsequent NPDES permits issued by the ODA, during any and all times when Defendant engages in construction activities at any of Defendant's sites or locations at the Croton facilities, Goshen facility, Mt. Victory facility, or Marseilles facility as required by law.

19. Defendant is enjoined and ordered to undertake immediate measures to control and eliminate the discharge of contaminated stormwater from any of the Croton facilities that have not been authorized by an NPDES permit to discharge the stormwater.

C. OPERATION AND MAINTENANCE OF WASTEWATER TREATMENT PLANTS AT THE CROTON FACILITIES

20. Defendant is enjoined and ordered to monitor and maintain the wastewater treatment plants at the four (4) Croton commercial layer complexes in such a condition that they provide secondary treatment. Defendant shall take a grab sample of the wastewater treatment plant twice a year in May and November. Samples taken as

required herein shall be representative of the volume and nature of the monitored flow and the wastewater treatment plant's performance. Test procedures for the analysis of pollutants shall conform to regulation 40 C.F.R. 136, "Test Procedures for The Analysis of Pollutants" unless other test procedures have been specified in any operative permit. The sample results shall not exceed a thirty-day average of 65 mg/L of suspended solids or a daily maximum of 90 mg/L of suspended solids. The sample results shall not exceed a thirty-day average of 25 mg/L of 5 day carbonaceous biochemical oxygen demand or a daily maximum of 40 mg/L of 5 day carbonaceous biochemical oxygen demand.

D. OPERATING REQUIREMENTS FOR ALL OFE FACILITIES

21. Defendant is hereby permanently enjoined and immediately ordered to operate all facilities in accordance with the permits issued by ODA for the facilities and the following additional terms and conditions:

- a.) Defendant shall operate the facilities so as to prevent a nuisance as defined by R.C. Chapter 3767. Defendant shall not handle manure, dispose of manure, arrange for the land application of manure, or land apply manure in a manner that causes or creates a nuisance. Defendant shall take such measures as may be necessary to prevent or reduce a nuisance fly outbreak. In the event that additional remedies are required, and Defendant fails to implement those remedies, the State may pursue a contempt action. Defendant shall consult with the State on nuisance prevention measures to be implemented. Nuisance prevention measures to be considered shall include, but are not limited to, the use of pesticides and removal of the manure as soon as possible. If the above remedies fail, the State reserves its right to request the Court to require the Defendant to take additional measures;
- b.) Defendant shall maintain and manage the manure buildings including barn pits and belt-battery manure storage barns to minimize the activity and reduce the presence of insects and rodents;

- c.) Defendant shall maintain a Management Team to carry out the insect and rodent control activities including the Director of Operations, the Site Production Manager, Senior Production Manager, Compliance Officer and the Qualified Professional Entomologist, when the Qualified Professional Entomologist is present;
- d.) Defendant shall require that the Compliance Officer, Site Production Manager, and Senior Production Manager inspect each barn and manure storage barn at least once every two weeks. Defendant shall also require that the Director of Operations and the Qualified Professional Entomologist, when the Qualified Professional Entomologist is present, inspect each barn and manure storage barn at least once per month during one of the Biweekly Management Team Inspections;
- e.) Defendant shall require that the Site Production Manager provide direct oversight of all new Barn Managers the first week as a part of the training or until proficiency is demonstrated, whichever occurs first;
- f.) Defendant shall require that the Site Production Manager of each facility and all other personnel involved with insect and rodent control activities including the Barn Manager shall receive training at the time of the beginning of the employment. The training shall be administered by the compliance officer and Qualified Professional Entomologist and address the following aspects:
 - i.) adult fly rating system and action levels;
 - ii.) larval fly rating system and action levels;
 - iii.) scraper board activation;
 - iv.) belt activation frequency;
 - v.) beneficial insect rating system and action levels;
 - vi.) manure row condition rating system and action levels;
 - vii.) water leak inspections, severity and response time for repairs;
 - viii.) use of monitoring forms;
 - ix.) reporting requirements including time frames;
 - x.) appropriate actions to be taken; and
 - xi.) purpose of program and consequences of program shortcomings;

- g.) Defendant shall require all current employees with insect management responsibilities to receive training from the Compliance Officer, the Qualified Professional Entomologist, and a Certified Livestock Manager on at least an annual basis and whenever the insect control plan is substantially altered, requiring new management techniques;
- h.) Defendant shall require the Site Production Manager to inspect each barn on a daily basis for the presence of insect activity including but not limited to the presence of flies. The Site Production Manager shall record the findings on an inspection form approved by ODA. The presence of adult flies shall be divided into four categories: (1) few-measuring less than one fly per square foot; (2) moderate-measuring two to five flies per square foot; (3) abundant-measuring greater than five flies per square foot; and (4) extreme-measuring dense flies, clustered in hundreds per square foot. Defendant shall assess fly and larvae levels on a form approved by ODA as "few," "moderate," "abundant" or "extreme;
- i.) Defendant shall require the Barn Manager to perform the Moving Tape Count fly method as approved by ODA to monitor adult house fly levels and the action level used to trigger fly control at all non-belt-battery barns. The Barn Manager shall perform the Moving Tape Count three days during every week at each non-belt-battery barn at each facility. The Moving Tape Count data shall be provided to the Site Production Manager who will record the data on a form approved by ODA and shall determine if the Action Threshold has been exceeded. Defendant shall require that the action threshold be established by the Qualified Professional Entomologist during the inspection, but at no time shall the action threshold exceed a level of thirty (30). Defendant shall perform an adult house fly treatment the next day after discovery if the count exceeds the applicable Action Threshold on at least one tape;
- j.) The Barn Manager and/or the Site Production Manager shall report the number of flies collected on the Moving Tape Count at least three days a week;
- k.) If a moderate level of flies is present, the Site Production Manager shall complete one corrective action within

twenty-four hours of the first indication of the moderate level of flies;

- l.) If an abundant level of flies is present, the Site Production Manager shall complete two corrective actions within twenty-four hours of the first indication of the abundant level of flies. The Site Production Manager shall promptly inform the Senior Production Manager of any barn with an abundant level of insect or larval activity;
- m.) If an extreme level of flies is present, the Site Production Manager shall complete at least two corrective actions within twenty-four hours of the first indication of the extreme level of flies. Chemical treatment designed to instantly kill insects and larvae shall be implemented on a daily basis for a minimum of seven days or as provided on the chemical treatment product label. The Site Production Manager shall promptly inform the Senior Production Manager of any barn with extreme insect or larval activity. Defendant shall also contact ODA LEPP within twenty-four hours of the first indication of the extreme level of flies so that ODA LEPP may schedule an on-site investigation;
- n.) The required actions shall include, but not be limited to, providing bait for the insects, chemical treatment designed to instantly kill insects and larvae applied to spaces, manure storage barn walls, and/or the manure directly; chemical treatment with residual effects applied to spaces, manure storage barn walls, and/or the manure directly; and spraying fungus to spaces, manure storage barn walls, and/or the manure directly.
- o.) Defendant shall treat manure with an appropriate insecticide prior to removal from the manure storage barns including barn pits. Defendant shall also treat manure with an appropriate insecticide prior to removal from the belt-battery manure storage barns upon the observation of the presence of flies, larvae, pupae and/or beetle or beetle larvae. Defendant shall also treat removed manure after land application if necessary to eliminate beetles or beetle larvae and to eliminate moderate, abundant, or extreme levels of flies and fly larvae;
- p.) Defendant shall monitor and apply insecticide to manure that has moderate, abundant, or extreme insect activity in

the manure storage barn until composting is complete and insect activity has subsided. Before land application of manure, Defendant shall stockpile manure for at least two weeks prior to land application within the parameters set by ODA rules if the manure possesses moderate, abundant, or extreme insect activity after removal;

- q.) Defendant shall incorporate any manure that is too wet to stockpile, such as manure with more than seventy percent moisture, within twenty-four hours from the time of removal, unless prior written authorization is obtained from ODA to not incorporate the manure during a specific land application event (for example, an emergency application to frozen or snow-covered ground);
- r.) Defendant shall be responsible for monitoring manure stockpiles and treating manure stockpiles with insecticide. All manure stockpiles shall be monitored and treated with insecticide by a Certified Livestock Manager ("CLM"), including stockpiles that are monitored and treated by a contractor and stockpiles that are monitored and treated by the Defendant. Defendant shall be responsible for monitoring stockpiles at least twice a week for beetle and fly activity until activity has subsided. Defendant shall be responsible for applying an insecticide if insect populations have not been reduced sufficiently to "few" for imminent land application activities. Defendant shall be responsible for monitoring stockpiles on a regular basis, not to exceed one week between inspections after beetle and/or fly activity has subsided, for pest activity. Defendant shall be responsible for treating stockpiled manure with appropriate insecticides when necessary to eliminate abundant to extreme levels of flies and fly larvae in the stockpiled manure;
- s.) Defendant shall be responsible for land application activities and maintain all records associated with land application of manure generated at the facility. All land application of manure shall be conducted by a CLM, including manure application conducted by a contract applicator and manure application conducted by the Defendant. Defendant shall instruct all CLM contract manure applicators to contact Defendant immediately upon observation of moderate, abundant, or extreme insect activity either during or after land application. In addition, Defendant shall instruct the CLM contract manure

applicators to immediately contact Defendant in the event that manure has not been applied in accordance with best management practices, setback requirements, conditions of this Order, and/or the conditions of any permit issued by ODA or Ohio EPA. Defendant shall oversee and coordinate any necessary response action with the contractor;

- t.) Defendant shall cover with a tarp all transportation vehicles transporting manure prior to leaving the facility;
- u.) Defendant shall provide bait stations and rodent control devices including multiple rodent catch traps to control and eliminate rodents. Defendant shall place bait stations along the outside perimeter of the barns and along the interior walls of the barns no farther than one hundred (100) feet apart from each other. Defendant shall also place rodent control devices including multiple rodent catch traps along the outside perimeter of the barns and along the interior walls of the barns so that each rodent catch trap is positioned one hundred (100) feet from each other. Defendant shall alternate bait stations and rodent control devices including multiple rodent catch traps every fifty (50) feet. Defendant shall inspect the bait stations and rodent control devices including the multiple rodent catch traps on at least a weekly basis. Defendant shall eliminate areas that are conducive to nesting including the storage of unused materials along walls within twenty-four (24) hours of discovery;
- v.) Defendant shall inspect on a daily basis each barn to locate, report, and repair water leaks immediately. Defendant shall document the daily inspections for water leaks in the operating record at each facility;
- w.) Defendant shall require that the Compliance Officer review and complete forms approved by ODA, which record the number of adult flies present in each barn, the level of fly larvae present in each barn, the level of beneficial insects present in each barn, the occurrence of water leaks or other miscellaneous problems, manure row conditions including whether manure was properly removed, whether the proper procedures were followed to establish windrows after removal, and/or the necessity to remove wet manure;
- x.) Defendant shall also require that the Compliance Officer with input from the other participating management team

members list all action items to be completed on a form approved by ODA. Defendant shall require that the Site Production Manager complete the corrective actions within seventy-two hours after the barn or manure storage barn inspection was completed with the exception of water leaks, which shall be repaired immediately. Defendant shall require actions to be completed within twenty-four hours if the Compliance Officer identifies any barn as a priority for insect control, or when the entire barn or twenty-five percent of any aisle are rated moderate or higher for adult flies or fly larvae;

- y.) Defendant shall require a Qualified Professional Entomologist, on at least a monthly basis, to: inspect the barns, evaluate the environmental conditions, evaluate the adult and larval fly populations, and make recommendations for possible control methods. Defendant shall also require a monthly report outlining the evaluation and recommendations to be submitted to the Compliance Officer and the Director of Operations, who shall forward the report to the ODA LEPP. The Qualified Professional Entomologist shall as a part of his report, analyze trends in the quality and effectiveness of manure management, analyze trends in the quality and effectiveness of insect control methods, analyze trends in the quality and effectiveness of rodent control methods, analyze trends regarding controlling microbial contamination, evaluate the compliance status of the barn renovation schedule if applicable, evaluate the compliance status of the pit fans renovation schedule if applicable, evaluate the barns that require control actions, and evaluate what control actions need to be made for the barns;
- z.) Defendant shall require the Compliance Officer to review the daily barn inspections completed by the Barn Manager. This review shall be completed weekly and recorded on a form approved by ODA;
- aa.) Defendant shall require that a Compliance Officer be informed immediately if a daily inspection of the manure storage barn or exiting manure belt has moderate to abundant or extreme fly or larvae activity. The Compliance Officer shall immediately direct the Site Production Manager to complete a corrective action;

- bb.) Defendant shall require the Compliance Officer to direct the Site Production Manager to complete a corrective action if the Management Team during their inspection discover moderate to abundant or extreme fly or larvae levels on a form approved by ODA;
- cc.) In the event that Defendant land applies egg shells, Defendant shall immediately incorporate egg shells into the soil unless prior written authorization for the stockpiling of the egg shells is obtained from ODA;
- dd.) Defendant shall comply with the Emergency Response Plan requirements as set forth in the permits to operate; and
- ee.) Defendant shall remove any pullet from the pullet barns before any pullet attains the age of eighteen (18) weeks. Defendant shall make arrangements to stock the pullets in compliance with the terms and conditions of this Order, PTO requirements, and Ohio laws and rules or dispose of the pullets through an otherwise approved method in accordance with the terms and conditions of any State permit including the PTO, the terms and conditions of this Order, and Ohio laws and rules.

22. Defendant is hereby permanently enjoined and immediately ordered to operate the Croton facilities in accordance with the permits issued by ODA for the facilities and the following additional terms and conditions:

- a.) Defendant shall at a minimum collect and analyze manure moisture samples from each manure storage barn at least once per month and make the manure moisture sample results available to ODA upon inspection. Defendant shall provide ODA with the laboratory analytical manure moisture results at the end of each calendar quarter and an annual manure analysis from the manure storage barns. Defendant shall retain all sampling records for a minimum of five years and the records shall be available for State review upon request. If a representative sample cannot be obtained because manure measures below three feet in height in the manure storage barns, OFE shall inform ODA in their quarterly submittal and inform ODA when the representative sample will be obtained. Defendant shall inspect the condition of the manure including moisture on each belt in each barn on a daily basis and record the results

in the operating record. Defendant shall contact ODA on the same day that Defendant receives notice if manure moisture in the manure storage barns or the physical condition of the manure on the belts shows excess moisture and/or exceeds sixty percent (60%) and provide to ODA possible remedial actions including the remedial action chosen for each incident;

- b.) Defendant shall install, maintain and inspect on a daily basis four (4) manure blower fans in each barn of the Croton Layer facilities and the Croton Pullet facilities except the "A" and "B" barns of the Croton Layer facilities by a vented tubular manifold spanning the length of the barn directly over each manure belt. Each fan shall operate continuously without interruption;
- c.) Defendant shall remove manure by belt transport on a daily basis from the "A" and "B" barns. Defendant shall grind and mix the daily mortality at each facility with the manure from the "A" and "B" barns, which will increase the manure moisture content, unless and until Defendant obtains an approved major operational change that eliminates this method of grinding and mixing mortality from each facility;
- d.) Defendant shall maintain the effective dryness of the manure in the manure storage barns in order to prevent excessive fly breeding and maintain the required moisture of the manure in the manure storage barns to prevent slumping of the manure. The manure that shall be removed from the "A" and "B" barns pursuant to Paragraph 22(c) shall be deposited into the manure storage barns considering the historically high moisture content of the "A" and "B" barns measuring fifty percent (50%) to seventy percent (70%). Defendant shall remove and deposit the drier manure from the remaining barns on the wetter manure in the manure rows in the manure storage barns, to attain an optimal manure moisture level between fifty percent (50%) and sixty percent (60%) moisture and a minimum temperature of 120 degrees Fahrenheit that is required for composting in manure rows over three (3) feet in height;
- e.) In the event that manure moisture levels exceed seventy-five (75%) percent in the manure storage barns, Defendant shall immediately remove the manure from the manure storage barns and land apply the manure according to PTO requirements and the Ohio laws and rules or dispose of the manure through an otherwise approved method in accordance with the terms and conditions of any State

permit including the PTO and Ohio laws and rules;

- f.) For the inspection of the presence of flies, Defendant shall require the Site Production Manager to inspect the back of each non-belt battery barn on a daily basis. The Site production managers shall inspect one pillar and one back bay of each non-belt battery barn every day, rotating between pillars and bays so that each pillar and bay is checked at least once a week. For the belt-battery barns, the Defendant shall require the Site Production Manager to inspect the back of each belt on a daily basis. The Site Production Manager shall record the findings on an inspection form approved by ODA. Defendant shall perform daily visual inspections of the manure storage barns and the existing manure conveyor belts where they deposit manure onto the cross-conveyor belt to assess the presence of flies and larvae. The level of flies and larvae shall be noted during the daily inspection on a form approved by ODA and shall also be noted during the Management Team Inspection by the Compliance Officer on a form approved by ODA. The presence of adult flies shall be divided into four categories: (1) few- measuring less than one fly per square foot; (2) moderate- measuring two to five flies per square foot; (3) abundant- measuring greater than five flies per square foot; and (4) extreme- measuring dense flies, clustered in hundreds per square foot. Defendant shall assess fly and larvae levels on a form approved by ODA as "few," "moderate," "abundant" or "extreme;" and
- g.) Defendant shall require the Barn Manager to perform the Fly Card Count method as approved by ODA to monitor adult house fly levels and the action level used to trigger fly control at all belt-battery barns. The Barn Manager shall perform the Fly Card Count method at each belt-battery barn at each facility at least once a week. The Fly Card Count data shall be provided to the Site Production Manager who will record the data on a form approved by ODA and shall determine if the Action Threshold has been exceeded. Defendant shall require that the action threshold be established by the Qualified Professional Entomologist during the inspection, but at no time shall the action threshold exceed a level of fifty (50). Defendant shall perform an adult house fly treatment the next day after discovery if the count exceeds the applicable Action Threshold on at least one card. The Barn Manager and/or

Site Production Manager shall report the number of flies collected on the Fly Card Count at least once a week.

23. Defendant is hereby permanently enjoined and immediately ordered to operate the Northwest facilities in accordance with the permits issued by ODA for the facilities and the following additional terms and conditions:

- a.) Defendant shall maintain fifty-six (56) thirty-six (36) inch manure drying fans throughout the manure pit of each barn at the Mount Victory Facility and Marseilles Facility and shall maintain forty-four (44) thirty-six (36) inch manure drying fans through the manure pit of each barn at Goshen Pullet Farm to reduce moisture and fly breeding potential;
- b.) Defendant shall install, maintain, and inspect pit fans so that they operate continuously without interruption, except for such times when the manure is being removed from the barns;
- c.) Defendant shall operate manure scrapers at least twice each day in each barn;
- d.) Defendant shall promote and maintain in each barn sufficient populations of beneficial insects that are predatory on fly larvae or aid in drying manure. Defendant shall provide that beneficial insects are established in the manure rows after the manure has been removed;
- e.) Defendant shall maintain the effective dryness of manure in order to maintain thirty percent (30%) manure moisture or less. Defendant shall at a minimum collect and analyze manure moisture samples from each barn at least once per quarter per year. Defendant shall provide ODA with the laboratory analytical manure moisture results at the end of each calendar quarter. Defendant shall retain all sampling records for a minimum of five years and the records shall be available for State review upon request. If a representative sample cannot be obtained because manure measures below three feet in height, OFE shall inform ODA in their quarterly submittal and inform ODA when the representative sample will be obtained. Defendant shall contact ODA on the same day that Defendant receives notice if manure moisture in the manure rows exceeds

thirty percent (30%) and provide to ODA possible remedial actions including the remedial action chosen for each row;

- f.) In the event that manure moisture levels exceed thirty percent (30%), Defendant shall complete at least one corrective action as set forth in Paragraph 21(n). In the event that manure moisture levels exceed fifty percent (50%), Defendant shall immediately remove the manure from the barns and land apply the manure according to PTO requirements and the Ohio laws and rules or dispose of the manure through an otherwise approved method in accordance with the terms and conditions of any State permit including the PTO and Ohio laws and rules; and
- g.) For the inspection of the presence of flies, Defendant shall require the Site Production Manager to inspect the back of each barn on a daily basis. The Site Production Manager shall inspect one pillar and one back bay every day, rotating between pillars and bays so that each pillar and bay is checked at least once a week. The Site Production Manager shall record the findings on an inspection form approved by ODA. The presence of adult flies shall be divided into four categories: (1) few- measuring less than one fly per square foot; (2) moderate- measuring two to five flies per square foot; (3) abundant- measuring greater than five flies per square foot; and (4) extreme- measuring dense flies, clustered in hundreds per square foot. Defendant shall assess fly and larvae levels on a form approved by ODA as "few," "moderate," "abundant" or "extreme."

24. Defendant is enjoined and ordered to remove the manure from all barns at the Mt. Victory facility, the Marseilles facility, and the Goshen facility no less frequently than the time frames provided in the approved permits to operate and/or this Order.

25. The Defendant is enjoined and ordered to immediately implement an inspection program that includes daily inspections of the exterior of each commercial layer and commercial pullet barn at all Croton facilities and the Croton Hatchery/Breeder Pullet Site and Croton Breeder 2 ("barns"). If the stocking of birds at a facility is not authorized by any ODA permit and no manure is generated at a facility as a result, then Defendant shall only be required to inspect that facility at a minimum of once a week.

The exterior barn inspection program shall include the following:

- a.) A focus on documenting releases from barns in quantities greater than thirty (30) gallons;
- b.) Assessing conditions that pose a threat of release of manure and other pollution to waters of the state;
- c.) The inspection of the exterior of the barns of each facility shall be accomplished at least once daily;
- d.) The results of such daily inspections shall be documented and shall be reviewed by the Compliance Officers of Defendant. Defendant shall retain all records for a minimum of five (5) years, and such records will be available for State review upon request; and
- e.) Require that Defendant take whatever lawful steps that are necessary to address any releases of manure or conditions that pose a threat of a release of manure or other pollution to waters of the State.

26. Defendant is enjoined and ordered to immediately implement an inspection program that includes daily inspections of all of Defendant's facilities that do not have a NPDES permit where stormwater ponds and controls are installed and in those locations where stormwater ponds and controls are later installed pursuant to this Consent Order. If the stocking of birds at a facility is not authorized by any ODA permit and no manure is generated at a facility as a result, then Defendant shall only be required to inspect that facility at a minimum of once a week. Defendant shall only be required to conduct daily inspections of the perimeter of each facility associated with a stormwater pond and controls. The perimeter inspection program shall include the following:

- a.) A focus on documenting unauthorized releases from stormwater ponds and controls;
- b.) Assessing conditions that pose a threat of release of manure and other pollution to waters of the state;

- c.) The inspection of the perimeter of each facility shall be accomplished at least once a day;
- d.) The results of such daily inspections shall be documented and shall be reviewed by the Compliance Officers of Defendant. Defendant shall retain all records for a minimum of five (5) years, and such records will be available for State review upon request; and
- e.) Require that Defendant take whatever lawful steps that are necessary to address any releases of manure or conditions that pose a threat of release of manure or other pollution to waters of the state and/or to fix and maintain all stormwater ponds and controls.

27. The Defendant shall within one (1) hour of the discovery of any unauthorized release of manure or other pollution from any commercial layer or commercial pullet facility or stormwater ponds or controls of any of Defendant's facilities, report such release to Ohio EPA and ODA. OFE shall immediately report the release to the Ohio EPA spill line at (800) 282-9378 and shall attempt to contact Cathy Alexander at (614) 644-2001 or Erin Sherer at (614) 728-3839 or their successors in order to report the release. OFE shall also immediately report the release to the ODA at (800) 282-1955 and shall attempt to contact Kevin Elder at (614) 387-0469 or his successor in order to report the release.

E. DRINKING WATER AT ALL OFE FACILITIES WITHIN THE STATE OF OHIO

28. Defendant is enjoined and ordered to comply with all plan approvals issued for the drinking water systems at all of the Defendant's facilities within the State of Ohio and all monitoring, reporting, and notice requirements established by the Director of Ohio EPA pursuant to R.C. Chapter 6109 and the rules adopted thereunder.

29. Defendant is enjoined to comply with the total coliform bacteria monitoring and maximum contaminant level requirements in accordance with Ohio Adm. Code 3745-81-21 and Ohio Adm. Code 3745-81-14, respectively.
30. Defendant is enjoined to notify the public in accordance with Ohio Adm. Code 3745-81-32 for: acute maximum contaminant level violations, the failure to monitor for volatile organic chemicals, the failure to sample routinely for total coliform, and the failure to monitor routinely for total coliform. Defendant is also enjoined to provide copies of all public notices and verification forms to Ohio EPA as required.
31. Defendant is enjoined to sever any connection from the potable public water systems at Croton Layer 1 and Croton Layer 4 to the pond wells within forty-five (45) days from the issuance of this Order to eliminate any possible cross-connection in accordance with Ohio Adm. Code 3745-95-02.
32. Defendant is enjoined to submit approvable plans to Ohio EPA for the water treatment facility at Croton Layer 3 within ninety (90) days from the issuance of this Order. Construction or use of Layer 3 is prohibited until such time as plans are approved by Ohio EPA.
33. Defendant is enjoined to submit approvable plans to Ohio EPA for the water treatment facility at Croton Layer 2 within ninety (90) days from the issuance of this Order. Construction or use of Layer 2 is prohibited until such time as plans are approved by Ohio EPA.
- F. PROHIBITION AGAINST THE BURIAL OF HATCHERY WASTES**
34. Defendant is enjoined and ordered to comply at all times with the terms and conditions of the permit to operate for the hatchery facility at the Croton facilities.

Defendant shall not at any time or for any reason dispose of hatchery wastes in any other manner than those approved in the hatchery permit to operate.

G. COMPLIANCE MONITORING PERSONNEL

35. Defendant is permanently enjoined and immediately ordered to dedicate the necessary number of employees to provide for environmental compliance monitoring and implement compliance with this Consent Order at each of Defendant's facilities within the State of Ohio, on a daily basis. The environmental compliance personnel required by this paragraph shall be exclusively dedicated to environmental compliance activities and shall not be involved in any other activities at the Defendant's facilities. Defendant shall provide to Ohio EPA and ODA within seven (7) days of the effective date of this order a complete list of all environmental compliance officers and their phone numbers. For purposes of this Consent Order, at least one environmental compliance officer shall be dedicated primarily to environmental compliance matters at the Croton facilities and one shall be dedicated primarily to the Northwest facilities.
36. Defendant is enjoined and ordered to provide its environmental compliance personnel with sufficient authority and resources including the funding for the resources to respond to any release or threatened release of manure or any other substance from any location at any and all of Defendant's facilities within the State of Ohio and to take any actions necessary to address any situation at any of Defendant's facilities within the State of Ohio that present a nuisance or present a threat of creating a nuisance.
37. The environmental compliance personnel required by this Consent Order shall be trained and qualified in terms of education and experience to demonstrate sufficient reliability, expertise, and competency to assure compliance with the terms of all permits

issued to Defendant by Ohio EPA and ODA, and all applicable provisions of the Ohio Revised Code, the Ohio Administrative Code, and this Consent Order.

38. Defendant is enjoined and immediately ordered to provide access to any representative of the State of Ohio for inspection, taking of samples or to otherwise perform their job duties at or in any barn, building, structure, or field at any and all of Defendant's facilities within the State of Ohio. Defendant shall provide appropriate safety and biosecurity equipment to allow State of Ohio personnel to inspect all buildings and structures, including OFE's hatchery facilities, at any and all of its facilities within the State of Ohio. Ohio EPA and the Department of Agriculture may utilize any appropriate personnel for any activity related to any of Defendant's facilities within the State of Ohio.

IX. REVIEW OF SUBMITTALS, NOTICES, AND RESUBMITTALS

39. Unless otherwise specified in this Consent Order, if Ohio EPA and/or ODA determines that any report, permit to install application, permit to operate application, NPDES application, plan approval application, or other document submitted pursuant to this Consent Order is incomplete or that improvements other than or in addition to those proposed by Defendant are necessary, then Defendant shall resubmit the document to Ohio EPA and/or ODA within fourteen (14) days of a deficiency notification from Ohio EPA and/or ODA, unless Ohio EPA and/or ODA extends the date for resubmittals. The Ohio EPA and/or ODA may accept each such document with additional terms and conditions. Upon Ohio EPA's and/or ODA's final authorization, Defendant shall implement the improvements in accordance with a schedule authorized by Ohio EPA and/or ODA. This schedule for implementing the improvements, when authorized by

Ohio EPA and/or ODA, shall be considered to be incorporated into Section VII of this Consent Order and fully enforceable as a requirement of this Consent Order.

40. All written notifications and correspondence, including reports, permit applications, and plans as required by this Consent Order, shall, unless specifically required to be provided to other entities or individuals, be sent to:

Ohio Department of Agriculture
Livestock Environmental Permitting Program
A.B. Graham Building
8995 East Main Street
Reynoldsburg, Ohio 43068

For all surface water submittals:

Ohio EPA
Division of Surface Water
Lazarus Government Center, 6th Floor
P.O. Box 1049
Columbus, Ohio 43216
Attn: Cathy Alexander or her successor

For all drinking water submittals:

Ohio EPA
Division of Drinking and Ground Water
Lazarus Government Center, 6th Floor
P.O. Box 1049
Columbus, Ohio 43216
and
Ohio EPA
Central District Office
Division of Drinking and Groundwater
P.O. Box 1049
Columbus, Ohio 43216, Attn: Enforcement Group Leader

X. CIVIL PENALTY

41. Defendant shall pay to the State of Ohio pursuant to R.C. 903.16, R.C. 6111.09, and R.C. 6109.33 a cash civil penalty of \$625,000. The civil penalty paid pursuant to this paragraph shall be paid according to the following conditions:

- a.) Defendant shall deliver, no later than June 30, 2011, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA - Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.
- b.) Defendant shall deliver, no later than June 30, 2011, a check in the amount of \$25,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "Ohio EPA - Drinking Water Protection Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty payment. If the Attorney General's Office notifies Defendant that the payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.
- c.) Defendant shall deliver, no later than September 30, 2011, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA - Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil

penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.

- d.) Defendant shall deliver, no later than September 30, 2011, a check in the amount of \$20,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "Ohio EPA - Division of Surface Water" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty payment. If the Attorney General's Office notifies Defendant that the payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.
- e.) Defendant shall deliver, no later than December 31, 2011, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" and to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA - Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.

- f.) Defendant shall deliver, no later than March 31, 2012, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA - Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.

XI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

42. In lieu of an additional \$150,000 civil penalty and in furtherance of the mutual objectives of the parties in further reducing potential impacts to public health, welfare, and the environment from Defendant's facilities, preventing impact to waters of the state, reducing odors and fly breeding potential, and for the advancement of scientific technologies designed to promote environmental protection, Defendant agrees to and is hereby ordered to implement supplemental environmental projects according to the following terms and conditions. Defendant is enjoined to expend no less than \$300,000 on supplemental projects within two years of the effective date of this Consent Order. Within one year of the effective date of this Consent Order, Defendant shall spend \$50,000 on permanent, natural windbreaks by planting trees around the Defendant's facilities, and Defendant shall spend the remaining difference by the end of the second year of the effective date of this Consent Order. All supplemental environmental projects

shall be approved by ODA prior to their implementation and prior to Defendant receiving any credit for their value.

43. If Defendant does not spend a total of \$300,000 on supplemental environmental projects within two years of the effective date of this Consent Order, Defendant shall immediately pay the \$150,000 civil penalty identified in paragraph 42, less one-half of any amount expended on supplemental environmental projects, including the planting of trees as natural, permanent windbreaks on Defendant's facilities or any other supplemental environmental projects approved by ODA. Defendant shall deliver a check drawn on an account with sufficient funds in the appropriate amount made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA - Livestock Management Fund" shall appear on the face of the check.

XII. ENFORCEMENT COSTS

44. Defendant shall pay the enforcement costs of the Ohio Attorney General expended prior to the entry of this Consent Order, by delivering a certified check in the amount of \$10,000 on or before December 31, 2011, made payable to the order of "Treasurer, State of Ohio" to Karen Pierson, or her successor, at the Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. "Ohio Attorney General's Office - Enforcement Costs" shall appear on the face of the check. Any check submitted in compliance with this Section of this Consent Order shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

XIII. STIPULATED PENALTY

45. In the event that Defendant fails to remove manure from the barns at any or all of the Defendant's facilities in accordance with the manure removal interval established in any PTO issued to Defendant by the Department of Agriculture, Defendant shall, be liable for, and shall pay, a stipulated penalty in accordance with the following amounts:

a) for each day of each such failure from day one through day ninety (90), the amount of one hundred dollars (\$100) per day per each barn; b) for each day over ninety-one (91) days until the manure in the barn(s) is completely cleaned out, the amount of five hundred dollars (\$500) per day per each barn.

46. In the event that Defendant fails to meet any requirement of this Consent Order, other than those addressed in Paragraphs 42 and 45 above, including any scheduled milestone requirement and any term or condition of any permit to install, permit to operate, egg wash and wastewater land application plan, or any other permit issued to Defendant by Ohio EPA and/or ODA, Defendant shall, immediately and automatically, be liable for, and shall pay, a stipulated penalty according to the following payment schedule: (a) for each day of each failure to meet a requirement, up to twenty (20) days, two hundred fifty dollars (\$250) per day for each requirement not met; (b) for each day of each failure to meet a requirement from twenty-one (21) to forty (40) days- five hundred dollars (\$500) per day for each requirement not met; (c) for each day of each failure to meet a requirement, from forty-one (41) to sixty (60) days - seven hundred fifty dollars (\$750) per day for each requirement not met; and (d) for each day of each failure to meet a requirement, over sixty-one (61) days - one thousand dollars (\$1,000) per day for each requirement not met.

47. Any payment required to be made under the provisions of Paragraphs 45 or 46 of this Consent Order shall be made by delivering, within forty-five (45) days from the date of failure to meet the requirement of this Consent Order, a check or checks drawn on an account with sufficient funds for the appropriate amounts made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. Defendant shall also state in writing the specific violation(s) and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties for specific violations shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

XIV. POTENTIAL FORCE MAJEURE

48. If an event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Consent Decree, Defendant shall notify ODA, Ohio EPA, and the Ohio Attorney General's Office in writing within ten (10) days from when the Defendant knew, or by the exercise of due diligence should have known, of the event. The notification to ODA, Ohio EPA, and the Ohio Attorney General's Office shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

49. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Defendant may raise that they are entitled to a defense that its conduct was

caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such defense exists, it is, however, hereby agreed upon by Defendant and State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a court proceeding to enforce this Consent Decree is commenced by the State of Ohio. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or a change in Defendant's financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Decree. Failure by Defendant to timely comply with the notice requirements of this Section shall render this Section null and void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's rights to request an extension of its obligations under this Consent Decree based on such incident. An extension of one date based on a particular incident does not mean that the Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Decree without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses they may have under applicable law.

XV. MISCELLANEOUS PROVISION

50. This Consent Order is not and shall not be interpreted to be a permit or a modification of any existing permit or plan approval issued pursuant to R.C. Chapters 903, 6109, and/or 6111. This Consent Order does not authorize the installation or modification or operation of any treatment works or disposal system or public water system. Defendant shall obtain all necessary permits, certificates, plan approvals, or approvals required under state or federal law in order to undertake the work contemplated by this Consent Order and/or any other installation or modification of any facility. The parties acknowledge and agree that issuance, renewal, modification, denial, or revocation of a permit(s), plan approvals and the issuance of orders or other actions of the Director of the Ohio EPA or the Director of ODA are not subject to challenge or dispute before this Court, but rather, shall be subject to challenge under R.C. Chapters 119, 903, or 3745, as appropriate. The parties further acknowledge and agree that issuance, renewal, modification, denial, or revocation of certain permit(s) and/or certificates by the Director of Agriculture pursuant to R.C. Chapter 903 are also "actions of the Director," and under Chapters 119, 903, and 3745, will only be subject to the original exclusive jurisdiction of the Environmental Review Appeals Commission and not this Court.

XVI. TERMINATION OF CONSENT ORDER

51. After Defendant has paid all civil penalties, costs, enforcement costs to the Ohio Attorney General, and stipulated penalties, if any, that are or may be due, including completion of the supplemental environmental projects or payment of the civil penalty attributed to such projects as set forth in Section XI, and so long as Defendant has complied with the injunctive relief and other terms and conditions contained in Sections

VII, VIII, and IX of this Consent Order until the timely issuance of renewal permits to operate no sooner than 2016, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order, including, without limitation, the injunctive relief set forth in Sections VII and VIII and the Court's retention of jurisdiction set forth in Section XVIII. Plaintiff takes no position with regard to such motion at this time, and reserves its right to oppose the motion. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the parties.

XVII. AUTHORITY TO ENTER INTO THIS CONSENT ORDER

52. The signatory for Defendant represents and warrants that he has been duly authorized to sign this document and so binds Defendant to all terms and conditions thereof.

XVIII. RETENTION OF JURISDICTION

53. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendant's compliance with the terms and provisions of this Consent Order, and to resolve any disputes arising under this Consent Order. Nothing herein alters the jurisdiction of the Environmental Review Appeals Commission under R.C. Chapter 3745.

XIX. COURT COSTS, COST RECOVERY, AND COST OF PUBLICATION

54. Defendant is hereby ordered to pay the court costs of this action.

55. Defendant is hereby ordered to pay the costs incurred by Ohio EPA for the publication of notice of this Consent Order in a newspaper of general circulation in Licking, Wyandot, Marion, and Hardin counties. Defendant shall pay the costs associated

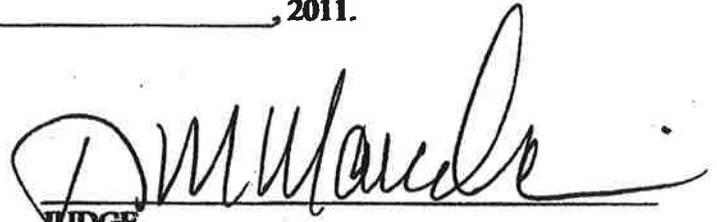
with these publications by delivering a check drawn on an account with sufficient funds payable to "Treasurer, State of Ohio," with a notation of the check that the funds go to "Fund 699," in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Lazarus Government Center, Columbus, Ohio 43216, within thirty (30) days from the date Defendant receives notice of the costs from Ohio EPA.

XX. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

56. The parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the lodging of the order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.
57. This Consent Order entered into between the parties represents the entire understanding between the parties and supersedes any earlier verbal or written communication regarding the same.
58. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the Consent Order upon the journal, the clerk is directed to serve upon all parties notice of the Consent Order and its effective date upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

IT IS SO ORDERED


Effective upon this _____ day of _____, 2011.



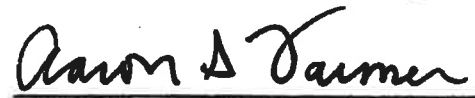
JUDGE
COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

APPROVED:

OHIO FRESH EGGS, LLC


Joe Laffoon, on
behalf of Ohio Fresh Eggs, LLC
Frank L. Merrill (0039381)
Bricker & Eckler, LLP
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